

(2002) 08 BOM CK 0007
In the Bombay High Court
Case No : Criminal Appeal No. 287 of 1987

Ashok Madhu Beluskar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 07-08-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 390
Penal Code, 1860 (IPC) — Section 302

Citation : (2003) BomCR(Cri) 390 : (2003) 105 BOMLR 4

Hon'ble Judges : D.G. Deshpande, J;A.S. Aguiar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.G. Deshpande, J.—This is an appeal by the accused against his conviction u/s 302 of the Indian Penal Code by the 4th Additional Sessions Judge, Thane in Judgment dated 23.3.1987 in Sessions Case No. 583 of 1986.

2. The charge against the accused was that on 5.8.1986 at about 8.00 a.m. he murdered his wife by name Asha by setting her ablaze after pouring of kerosene upon her. The marriage of the accused with Asha had taken place 14 to 15 years before the incident. She was residing with him and his mother and two children at Rabodi, Shivaji Nagar, Thane. The accused was unemployed and not doing any work for earning his livelihood. He was also addicted to liquor and hence there used to be quarrels.

3. The incident took place on 5.8.1986. The mother of the accused was serving in mental hospital and she was not present in the home. The accused demanded Rs. 5/- from Asha for purchasing liquor and entered into a quarrel with her. When Asha refused to give this amount the accused snatched the silver chain from the person of his daughter Sapna. Asha snatched the chain from the accused and there was quarrel and thereafter the accused poured kerosene upon her and set her to fire.

4. When Asha started burning, accused put a quilt i.e. Godhadi on her person. Asha shouted, drew the attention of the neighbours Shantabai and Kshirsagar. They came there, they extinguished the fire, uncle and aunt of Asha came there and took her to the hospital.

5. The incident had taken place at 8 a.m. Asha was removed in the hospital at about 8.45 a.m. Medical Officer examined her at 9.00 a.m. and when Dr. Kempy Patil enquired from Asha about the cause of burns she gave the cause as per the case of the prosecution. Thereafter Asha was admitted in the hospital.

6. One Head Constable Raosaheb Pawar was attached to Civil Hospital, Thane. When he learnt about Asha being admitted in the hospital, he informed the Special Judicial Magistrate for recording her dying declaration and Head Constable Pawar also after he consulted the Doctor recorded the dying declaration. The same was forwarded by him as F.I.R. to Thane Nagar Police Station, and then Special Judicial Magistrate also recorded the dying declaration.

7. Offences came to be registered against the accused. On 8.8.1986 Asha died and thereafter charge-sheet was filed against the accused for offence u/s 302 of the Indian Penal Code before the aforesaid Court.

8. The prosecution examined in all 12 witnesses. The defence of the accused was of total denial. The Trial Court accepted the prosecution case which was mainly based on three dying declarations, convicted the accused and hence this appeal.

9. We heard the learned Counsel for the accused at length and also the learned A.P.P. The defence of the accused was of total denial and since the case of the prosecution was mainly based on the dying declaration, the Counsel for the accused contended that none of the dying declarations should be accepted. He also contended that there were no other circumstances to corroborate the dying declarations and therefore the accused was entitled for acquittal.

10. In the Trial Court the accused has not. challenged that Asha died due to burn injuries. In statement u/s 313 of the Criminal Procedure Code the accused did not raise the defence that Asha might have committed suicide nor was his defence that it was an accidental death. His case is that at the relevant time and place he had gone out of house to bring milk and when he came back he found that his wife Asha was lying on the ground in burn condition and thereafter he put the quilt on her person and tried to extinguish the fire but at that time the neighbours came there. Asha was not in a position to speak with the neighbours and then he took her to the hospital. He has further stated that uncle and aunt of Asha took her in one rickshaw and he went to the hospital by other rickshaw but since his mother was serving in the mental hospital, he went to inform her mother she was not there, then he came back to the Civil Hospital, Thane. A crucial question that is raised therefore in this background is whether the dying declarations inspire confidence and whether the conviction of the accused is proper.

11. The learned A.P.P. further contended that there is absolutely no reason to disregard or disbelieve any of the three dying declarations, one of which was recorded as a case history by Dr. Kempy Patil. The other one was recorded by the Head Constable and the third one was recorded by the Special Judicial Magistrate. The learned A.P.P. contended that all three dying declarations are consistent, and proper precautions were taken before dying declaration and therefore there are no reasons to disbelieve them. He contended that the accused is rightly convicted and no interference was called for.

12. Out of the 12 witnesses examined by the prosecution P.W. 1 is Sitaram Kondiram Shirsagar who extinguished the fire while the accused was present in the room and then Asha was removed to the hospital. The witness was helped by his wife in doing so. He does not say about any attempt being made by the accused to extinguish the fire and he has admitted that he did not see whether the hands of the accused were burnt P.W. 2 is the neighbour of the accused by name Dattatraya. He stated that the accused was addicted to liquor. There used to be quarrels between him, his wife and mother, and accused used to take money from his wife or mother for liquor. He had also advised the accused not to quarrel but there was no improvement in the behaviour of the accused. In the cross-examination nothing fruitful is brought. P.W. 3 Kamlakar Ramchandra Rokade who is a Constable, turned hostile, did not support the prosecution. P.W. 4 Shankar Janu Rokade who is a Constable, turned hostile but did not support the prosecution. P.W. 5 Ramesh Janu Rokade also did not support the prosecution and was declared hostile. P.W. 6 Harishchandra Bhau Rokade also did not support the prosecution.

13. The important witness for the prosecution is P.W. 7 Raosaheb Vithal Pawar. He stated that on that day he was on duty in Civil Hospital, Thane, since 8 a.m. At about 9 o'clock Asha was admitted in the hospital by her uncle and aunt in burnt condition. He informed the Medical Officer that he wanted to record her dying declaration and also wrote a letter to the Special Judicial Magistrate for that purpose. He then took the Medical Officer with him in the Ward. Medical Officer examined Asha and told him that she was in a position to give statement. Thereafter he recorded her statement as per her say and obtained her thumb impression. Medical Officer put his endorsement. The said statement is at Exhibit 20, This statement was then forwarded by him to the Police Station, which is a report. Statement of Asha is at Exhibit 20. It is endorsed by Dr. Shaikh, wherein he has stated that patient was conscious and can give her statement. Asha has narrated as to how quarrel took place between her and the accused. How accused tried to snatch the chain from the daughter Sapna to satisfy his need of liquor and how in the quarrel he got annoyed and poured kerosene on her and thus burnt her. She has also stated that fire was put off by neighbours Shantabai Shedvekar and Indu's husband Kshirsagar and other people.

14. Suggestion was put to this witness that Shankar Rokade who was brother of Asha and who was also a Constable had asked him to record the dying

declaration so as to implicate the accused. Suggestion is obviously denied by the witness. There is absolutely nothing in the cross-examination to doubt the veracity of the witness in any manner whatsoever. Another suggestion was made that Asha was not in a position to give statement but the same was flatly denied by the witness.

15. Next important piece of evidence that is stated by the prosecution is of P.W. 8 Madhav Narhar Kulkarni Acting Special Judicial Magistrate. He has stated about receiving requisition for recording Asha's dying declaration he then went to the hospital, met the Medical Officer and after Medical Officer examined her and issued certificate about fitness of Asha, he recorded the statement of Asha. Asha narrated same thing to the Special Judicial Magistrate which she had stated before the Head Constable, as stated above. The statement of Asha is proved at Exhibit 26.

16. Witness (P.W. 8) has proved his letter to the Doctor on duty certifying about Asha's condition to give statement vide Exhibit 24. Medical Officer's certificate in that regard is at Exhibit 25, wherein the Medical Officer has stated that he examined Asha and found she was conscious and able to give statement. Thereafter statement of Asha is proved at Exhibit. 26, there is again endorsement that Asha was conscious during the statement. The statement was read over to Asha; she admitted it to be correct. Unfortunately for the accused there is no effective cross-examination at all of this witness. Cross-examination is very short and cryptic and is concluded in one para without making any effort to shatter the credibility of the witness or create the doubt about his evidence. Only suggestion was given to him that she had not given the statement and that she was not in a position to give any statement but both of these suggestions were denied.

17. Third piece of evidence is coming from P.W. 9 Dr. Jamil Ahmed Razak Shaikh. He has produced the original case papers vide Exhibit 28 and has stated that the patient Asha herself gave the history of homicidal burns by the husband who wanted to sell the daughter's ornaments for wine. Therefore quarrel took place and accused poured kerosene on her and put her up on fire. He has corroborated the evidence of Head Constable Pawar about his endorsement given to Mr. Pawar. He has also proved his endorsement given to the Special Judicial Magistrate as per Exhibit 25.

18. Counsel for the accused tried to rely upon an admission given by this witness in cross-examination that he was not present throughout when Head Constable Pawar recorded her statement. We do not find any irregularity in this. Apart from the suggestion absolutely nothing is brought to effect the credibility of the witness.

19. Counsel for the accused however contended that all the three dying declarations are stereo type and therefore they create suspicion about their truthfulness. However, consistency in the statements according to us is a strong

circumstance against the accused. All the three dying declarations were recorded promptly after taking all the precaution and after Asha was found to be conscious and fit to give statement. As discussed above the cross-examination of all the three important witnesses, referred to above is totally futile and unproductive. The Trial Court has therefore, in our opinion, rightly convicted the accused on the basis of the aforesaid evidence. The reasonings given by the Trial Court are perfectly justified since the defence has failed to make any erodes in the prosecution case or effectively challenge the evidence, hence the appeal is required to be dismissed. Therefore the following order:

ORDER

Appeal is dismissed.

Accused to surrender or undergoing sentence within four weeks from today before the Trial Court, Upon his surrender, his bail and bail bond given pursuant to action u/s 390 of the Criminal Procedure Code shall stand cancelled.