
(2013) 01 BOM CK 0256

In the Bombay High Court

Case No : Criminal Appeal No. 174 of 2001

Balasaheb Asaram Shirsath

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, 34, 498A

Citation : (2013) ALLMR(Cri) 1222 : (2013) 4 BomCR(Cri) 267

Hon'ble Judges : P.V. Hardas, J

Bench : Single Bench

Advocate : Satej S. Jadhav holding for Mr. V.P. Golewar, for the Appellant; S.K. Tambe, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.V. Hardas, J.—The appellant, who stands convicted for an offence punishable under Sections 304B and 498A of the Indian Penal Code and sentenced to R.I. for seven years and to pay fine of Rs. 5,000/-, in default of which to undergo further R.I. for one year and R.I. for one year and to pay fine of Rs. 3,000/-, in default of which to undergo R.I. for six months, with a direction that the substantive sentences shall run concurrently, by the Additional Sessions Judge, Shrirampur, by judgment dated 12.4.2001, in Sessions Case No. 34 of 1998, by this appeal questions the correctness of his conviction and sentence. Facts, in brief, as are necessary for the decision of this appeal, may briefly be stated thus:-

PW 3 A.P.I. Babaji Budhwant, who was attached to police station, Newasa investigated the offence registered by Police Head Constable Shelke on 4.9.1994 on the basis of the report lodged by PW 1 Kachru at Exh. 11. PW 3. A.P.I. Budhwant accordingly collected the statement recorded of injured Vimal by the police from Tophkhana police station and also collected the dying declaration recorded by the Special Executive Magistrate. He collected the inquest panchanama which was drawn by the police. He also collected the scene of the incident panchanama drawn by Police Head Constable Vadaje. He recorded the

statements of witnesses and arrested the accused. Further to the completion of investigation, a charge sheet against the appellant and another accused was submitted.

2. Post-mortem on the dead body of deceased Vimal was performed by the Medical Officer of the District Hospital, Ahmednagar. Vimal had sustained 76 per cent burns, and therefore, the cause of death was due to cardio respiratory failure due to 76 per cent burns. The post-mortem report is at Exh. 16 as it was admitted by the accused.

3. On committal of the case to the Court of Sessions, the trial court vide Exh. 3 framed charge against the accused for offences punishable under Sections 304B r/w 34 and 498A r/w 34 of the Indian Penal Code. The accused denied their guilt and claimed to be tried.

4. Prosecution in support of its case examined three witnesses. The accused in their defence examined four defence witnesses; while the court examined one witness as a court witness. The trial court, upon appreciation of the evidence convicted and sentenced the appellant as afore stated; while acquitting original accused No. 2.

5. In order to effectively deal with the submissions advanced before me by Shri S.S. Jadhav, learned counsel for the appellant and learned A.P.P. on behalf of the respondent/State, it would be useful to refer to the evidence of the witnesses.

6. PW 1 Kachru, father of deceased Gangubai states that his daughter Gangubai was married to the appellant about 3 to 4 months prior to the incident. At the time of marriage, he had paid Rs. 6,000/- as dowry and the remaining amount of Rs. 2,000/- had remained unpaid. He further states that the appellant and original accused No. 2 were harassing his daughter Gangubai for nonpayment of the remaining amount of dowry. According to him, the accused used to assault Gangubai in order to compel her to bring Rs. 2,000/-. Kachru states that his daughter had informed him about the ill-treatment whenever she had met him. He states that he was informed about admission of his daughter Gangubai in the Civil Hospital at Ahmednagar, and therefore, he had gone to the Civil Hospital to see her. When he had gone to the hospital, he had found that Gangubai was unconscious. His daughter Gangubai had succumbed to the injuries on the 4th day of the incident. He states that thereafter on 4.9.1994 he had lodged the report at Exh. 11.

7. Prosecution has also examined PW 2 Dnyandeo, brother of deceased Gangubai. Dnyandeo also deposes on similar lines that the accused used to ill-treat his sister for payment of Rs. 2,000/-. He further states that his sister had shown to him the weal marks of assault. In cross-examination, an admission has been elicited that he had not stated about noticing the weal marks. According to both these witnesses, the appellant and the other accused had not allowed them to participate in the funeral.

8. The accused has examined Ashok Zarekar, a Medical Officer, who was serving as Medical Officer at the Primary Health Center, Newasa, as Defence Witness No. 1. He states that on 5.9.1994 he had examined the appellant and had noticed the following external injuries:-

1] Superficial burns on upper part of sternum.

2] Burns on right dorsal side of fingers.

3] Burns on left hand dorsal side of fingers.

He had opined that the injuries had been caused within eight days and were simple in nature. The cause of injury was on account of burns. He states that he had issued the medical certificate at Exh. 23.

9. DW 2 Dr. Shubhada Ranade, who was serving as a Medical Officer at Ahmednagar, had examined injured Gangubai @ Vimal when her statement was recorded by the police at Exh. 28. DW 2 Dr. Ranade further states that she had also examined injured when her statement was recorded by the Special Executive Magistrate, and on both the occasions, found that the injured was in fit condition to give her statement. In cross-examination, she has admitted that the relatives of the patient were not present at the time of examination. She has also admitted that both the hands of the injured had sustained burns.

10. DW 3 Rafil Thorat, a Head Constable, who was attached to Tophkhana police station, states that on 1.9.1994 he was on duty at the Civil Hospital, Ahmednagar. One lady by name Vimal had been admitted in the Civil Hospital with burns. P.S.I. Darandale had informed him on telephone that he should record the statement of the injured. He had accordingly issued a memo to the Special Executive Magistrate for recording the dying declaration of Vimal. He, therefore, requested the Medical Officer to examine Vimal and to opine if she was in a fit condition to give her statement. Accordingly, Dr. Ranade examined Vimal and opined that she was in a fit condition to give her statement. Rafil states that thereafter he recorded the statement of Vimal at Exh. 28. He states that before he had recorded the statement of Vimal, the Special Executive Magistrate also had recorded the dying declaration of Vimal. In cross-examination, he has admitted that he was standing outside the Ward when the statement of Vimal was being recorded by the Special Executive Magistrate. He has also admitted that the accused nos. 1 and 2 were not present in the Ward. He has admitted that there is eraser of the date, as initially date "31" was written, but thereafter it was altered to "1.9.94". He has denied the suggestion that Vimal had not sustained any injuries on her thumb. He has denied the suggestion that he had prepared a false statement.

11. The accused has also examined DW 4 Ganpat Shekatkar, who then was the Special Executive Magistrate. He states about recording the dying declaration of Vimal at Exh. 31. In cross-examination, he has admitted that he had recorded the statement of Vimal at 10.30 a.m. He has admitted that there is endorsement

of the Medical Officer to the effect that the patient was conscious while giving her statement. He has admitted that the statement recorded by him and the statement recorded by the Head Constable Thorat are identical.

12. In the two dying declarations at Exh. 28 and Exh. 31, injured Gangubai @ Vimal had clearly stated that she had accidentally sustained the burns. The scene of the offence panchanama at Exh. 13 also corroborates the fact that the stove was found in the kitchen. As per the dying declarations while she was cooking food on the stove, on account of the sudden blazes of the stove she had sustained the burns.

13. The Trial Judge had recorded the evidence of Dr. Ashok Ingale as a court witness. CW 1 Ashok Ingale also states that injured Vimal had disclosed to him that she had accidentally sustained burns due to the blazes of the stove. The afore said history is recorded in the medical case papers which had been produced at Exh. 35.

14. In the dying declarations, injured Vimal had clearly stated that she had no complaint against her in-laws. Merely because the wording of the two dying declarations is identical, it would not lead to an inference that both the dying declarations have been concocted or fabricated. Even if the dying declaration at Exh. 28 is left out of consideration, there is no reason to disbelieve the dying declaration at Exh. 31, which is recorded by the Special Executive Magistrate. The Medical Officer has been examined, who has deposed about the fitness of the injured to give her statement. I, therefore, find that there is sufficient evidence on record to indicate that deceased Gangubai @ Vimal had sustained the burns while she was cooking food in the kitchen. The scene of the offence panchanama also corroborates the fact that the stove was found in the kitchen.

15. The conviction of the appellant rests principally upon the oral evidence of PW 1 Kachru and PW 2 Dnyandeo in respect of the ill-treatment of the deceased. The deceased Vimal in dying declaration at Exh. 31 had clearly stated that she had no complaint against the accused. The first information report was lodged after the funeral of deceased was performed. PW 1 Kachru and PW 2 Dnyandeo were not allowed to participate in the funeral rites of deceased, and consequently, it appears that they were angered and a report came to be lodged. No report regarding ill-treatment had been lodged by PW 1 Kachru immediately after deceased Gangubai @ Vimal had sustained the burns. The report, therefore, is an after thought report. There is no corroboration to the testimony of PW 1 Kachru and PW 2 Dnyandeo, which stands falsified in the light of the recitals of the dying declaration at Exh. 31. The immediate disclosure made by Vimal to court witness No. 1 about sustaining the burns accidentally because of the blazes of the stove, would, therefore, completely falsify any ill-treatment being given to deceased Vimal or the accused setting the deceased ablaze. I also find that there is no evidence at all that deceased Vimal was ill-treated on account of demand for dowry by the appellant. The appellant, therefore, in my opinion, is entitled to be given the benefit of doubt and deserves to be acquitted. Accordingly, this

Criminal Appeal is allowed and the conviction and sentence of the appellant is hereby quashed and set aside and the appellant is acquitted of the offence with which he was charged and convicted. Fine, if paid, by the appellant be refunded to him. His bail bonds stand cancelled.