

(2011) 09 BOM CK 0105
In the Bombay High Court
Case No : Criminal Appeal No. 197 of 2010

Bhaskar Janardhan Salunke

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307, 436, 504

Citation : (2012) BomCR(Cri) 273

Hon'ble Judges : A.R. Joshi, J;A.H. Joshi, J

Bench : Division Bench

Advocate : A.H. Kasliwal, holding for A.D. Kasliwal, for the Appellant; S.D. Shelke, APP, for the Respondent

Final Decision : Allowed

Judgement

A.R. Joshi, J.—Heard rival submissions on this appeal, preferred by the Appellant/sole accused, challenging the judgment and order of conviction passed by the learned Additional Sessions Judge, Shrirampur, dated 23.2.2010, in Sessions Case No. 15 of 2008.

2. The brief facts of the case are as under:

Victim Vandana was married with Appellant/accused in the year 1994. The married couple had two children. The Appellant/accused husband of victim Vandana, was addicted to liquor and at times, used to beat her on various counts. One of such incidents of beating occurred in the evening of 8.12.2007 i.e. the fateful day. On that evening the Appellant ordered his wife victim Vandana to prepare the meal and also asked her to prepare some dish containing eggs. That day, being Saturday, victim Vandana refused to cook the food containing eggs. This refusal infuriated the Appellant and at that time, he was also drunk. He started abusing his wife victim Vandana in filthy language and took out the kerosene lamp and poured kerosene on the person of victim Vandana and set her on fire by igniting a matchstick. Due to such sudden

incident, victim Vandana got up in the hut and started running out. She shouted for help. She fell on the ground outside the hut. Her son Nilesh came to rescue her and put quilt on her person.

3. Due to the incident of burning, various persons gathered on the spot. Victim Vandana was taken to Civil Hospital, Ahmednagar. Intimation was given to the Police. On the next day morning, at about 11.15, dying declaration of victim Vandana was recorded by PW 2 Bhaskar Bhos, Special Judicial Magistrate. Said dying declaration was treated as first information report and offence was registered against the Appellant for the offences under Sections 307, 436 and 504 of the Indian Penal Code ("IPC" for brevity). On the next day of registration of offence, spot panchanama was conducted, photographs of the place of occurrence were taken, clothes of the Appellant were take charge of under the panchanama and statements of witnesses were recorded, including the statement of Nilesh son of victim Vandana and the Appellant. While under treatment in the hospital, victim Vandana succumbed to 87 per cent burn injuries on 2.1.2008. Apparently, she was under treatment in the hospital for about 24 days after the incident of burning. The cause of death is "Septicemia due to burn injuries." Postmortem report was obtained. Seized articles were sent for chemical examination and on completion of the investigation, charge sheet was filed and the matter was committed to the Court of Sessions, which ended in conviction of the Appellant, for the offence punishable u/s 302 of Indian Penal Code, 1860. He was sentenced to suffer imprisonment for life and to pay fine of Rs. 500/in default to suffer simple imprisonment for one month. The accused was acquitted for the offence punishable u/s 436 of Indian Penal Code, 1860. There is No. appeal preferred by the State against the acquittal for the offence punishable u/s 436 of Indian Penal Code, 1860.

4. It is the defence of the Appellant that the incident was either accidental or it might be a suicide committed by his wife, as apparently, there was No. motive for him to kill his wife, that also, after about 12 years of marriage. It is the defence of the Appellant that on that evening of the incident, along with his both children, he was outside his hut and his wife was inside the hut cooking for night meal. He heard the shouts of his wife and noticed that her saree had caught fire. He tried to extinguish the fire and in that process, sustained injuries.

5. Certain factual position can be narrated in order to have proper perspective of the matter and in order to appreciate the arguments advanced on behalf of the Appellant/accused.

(1) There are totally five witnesses examined by the prosecution and out of them only important witness is PW 2 Bhaskar Bhos, Special Judicial Magistrate, who recorded the dying declaration on the next day of the incident.

(2) PW 4 Amol is real brother of victim Vandana. However, he did not support the case of prosecution and turned hostile. He was crossexamined by the learned APP, however, nothing was extracted in order to support the case of prosecution.

He denied having heard from his sister as to the accused pouring kerosene on her person and setting her on fire.

(3) The case of prosecution is based only on the dying declaration given by victim Vandana.

(4) Though apparently, there were two other witnesses, who had seen victim Vandana coming out of the hut in the burning condition and though the presence of Nilesh is an admitted position, these witnesses and Nilesh son of victim Vandana and Appellant, are not examined by the prosecution.

6. Bearing in mind the above factual position, only authenticity or otherwise of the dying declaration (Exhibit 24) is required to be considered. We have gone through the contents of the said dying declaration, which is in vernacular Marathi, which show the details as to the marriage took place in the year 1994 and her husband appellant/accused working as agricultural labour and her in laws staying separately but in the neighbourhood.

It is further mentioned in the dying declaration that as usual the Appellant/accused came home in the evening in drunken condition and had a quarrel with victim Vandana and assaulted her. Thereafter, he asked her to prepare the food containing eggs and on her refusal, he again abused her and poured kerosene on her person and set her on fire.

Thereafter, he pushed her out of the hut, when she was in burning condition. That time, her son Nilesh was present there and he put quilt on her person and extinguished the fire. In the dying declaration, it is specifically mentioned that her husband/accused did not try to extinguish the fire and she was brought to the hospital by Nilesh and other villagers. As against this, there is a statement of the Appellant/accused recorded u/s 313 of the Code of Criminal Procedure, in which he denied the allegations regarding pouring kerosene on the person of his wife and setting her on fire. However, he putforth his defence, as mentioned earlier, inasmuch as, on that evening, victim Vandana was preparing meal in the hut and he and his two children were outside the hut. All of a sudden, there were shouts and he, along with his children, went inside and saw clothes of victim Vandana in the burning condition. He extinguished the fire. That time he also sustained burn injuries. He enquired with her as to what had happened. However, she was not in a position to answer.

7. Considering the defence of the Appellant/accused on preponderance of probabilities and considering the hostility shown by PW 4 Amol real brother of victim Vandana, it must be said that the learned Additional Sessions Judge had erred in placing reliance on the sole evidence of dying declaration and holding the Appellant/accused guilty for the offence of murder. This is more so, in view of not establishing any motive against the Appellant/accused for committing such offence that also after about 12 years of marriage and only on the alleged flimsy ground as to refusal by the wife to prepare the meal containing eggs. In our view, the circumstances established before the Sessions Court give rise to

reasonable doubt as to whether the Appellant/accused was the author of the incident and in that event, benefit of doubt is required to be given in his favour. Consequently, the impugned order needs interference and the same is accordingly set aside with following order.

ORDER

Criminal Appeal No. 197 of 2010 is allowed.

The judgment and order of conviction passed by the Additional Sessions Judge, Shrirampur, dated 23.2.2010 in Sessions Case No. 15 of 2008 is set aside. The Appellant/accused is acquitted of the offence u/s 302 of the Indian Penal Code. He be released from jail custody forthwith, if not required in any other crime. Fine amount, if already paid, be returned back to him.