
(2014) 07 BOM CK 0247
In the Bombay High Court
Case No : Criminal Appeal No. 841 of 2012

Bhimrao Baban Shinde	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

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

Citation : (2014) 07 BOM CK 0247

Hon'ble Judges : V.K. Tahilramani, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : Rohini M. Dandekar, Advocate for the Appellant; A.S. Pai, A.P.P, Advocate for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J.—The appellants-original accused has preferred this appeal against the judgment and order dated 20th January 2012 passed by the learned Additional Sessions Judge, Vaduj, in Sessions Case No. 63 of 2010. By the said judgment and order, the learned Additional Sessions Judge convicted the appellant u/s 302 of IPC and sentenced him to R.I. for life and fine of Rs. 1000/-, in default S.I. for 3 months.

2. The prosecution case briefly stated, is as under:

(i) Deceased Ujwala, daughter of Bhimrao Shinde, was married to appellant about 17 years prior to the incident. After the marriage, Ujwala went to reside with the appellant at village Yeliv, Taluka-Khatav, District-Satara. The appellant and Ujwala had one son by name Akshay who was minor at the time of incident. The appellant was addicted to liquor and he used to assault his wife Ujwala under the influence of liquor. The appellant was suspecting that his wife Ujwala was having an affair with one Sanjay. Due to this, the appellant used to assault Ujwala with handle of sickle.

(ii) The incident occurred on 11.3.2006. On that day, Ujwala was at home. The

appellant came home in an intoxicated state and started abusing Ujwala. Thereafter he went out at about 7 p.m., he again came home in an intoxicated state and he started raising suspicion about the character of Ujwala. Based on that suspicion, he started abusing and assaulting Ujwala. Ujwala told him that why he was beating her and why he was taking suspicion on her character. Whereupon, the appellant started assaulting Ujwala with sickle. Ujwala started shouting. Then the appellant poured kerosene from the stove on Ujwala and set her on fire with burning match-stick. The fire was extinguished by Akshay, the son of appellant and deceased Ujwala. Akshay then informed his maternal grandmother (PW-2 Kantabai) about the incident on telephone and told her to come to village Yeliv. Kantabai, the mother of Ujwala, reached village Yeliv at about 9 p.m. She saw her daughter Ujwala had sustained burn injuries all over her body and was lying on a mat. Nobody was in the house. Kantabai then took Ujwala to the hospital in a vehicle. Kantabai made enquiry with Ujwala as to what had happened. Thereupon Ujwala told her that the appellant had poured kerosene from the stove on her and set her on fire.

(iii) After Ujwala was taken to the hospital, PW-5 Police Constable Shri Ramesh Shitole was informed by the Doctor from the Civil Hospital that burn patient was admitted and her statement is to be recorded. Hence, P.C. Shitole went to the hospital. After Doctor examined the patient, he asked the patient her name and made enquiry with her. Ujwala told him that her husband had consumed lots of liquor and had beat her. On 11.3.2008 at about 7 p.m. her husband assaulted her with sickle, then he poured kerosene from the stove on her and set her on fire with burning match stick. Ujwala told Shitole that she was disabled in one leg therefore she could not run away. Police Constable Shitole read over the statement to Ujwala and she signed on the statement. The said dying declaration is at Exhibit 43.

(iv) Thereafter on the next day, PW-4 Police Head Constable Jadhav received information that one lady from Yeliv had sustained burn injuries. Accordingly, he went to the hospital. He enquired with Doctor whether patient is in a condition to give her statement. Doctor examined her and told him that she is in a fit condition to give a statement. PHC Jadhav then recorded the statement of the lady as narrated by her in the presence of Doctor. The said dying declaration is at Exhibit 33 and it was treated as FIR. Thereafter investigation commenced. After Ujwala expired, the offence was converted from Section 307 to Section 302 of IPC. After completion of investigation, chargesheet came to be filed.

3. Charge came to be framed against the appellant which is at Exhibit 9. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant was of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4. We have heard Ms. Rohini Dandekar, learned Advocate for the appellant and Mrs. Pai, the learned APP for the respondent-State. We have carefully considered

their arguments, the facts and circumstances of this case, the judgment and order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the matter, for the below mentioned reasons, we are of the opinion that the appellant poured kerosene on his wife Ujwala and set her on fire which resulted in her death.

5. The conviction of the appellant is mainly based on two dying declarations i.e. Exhibits 33 and 43. PW-5 Police Constable Shitole has recorded dying declaration Exhibit 43. This dying declaration was recorded on 11.3.2008 at about 11.45 p.m. PW-5 Shitole has stated that he was informed by the Doctor from the Civil Hospital that burn patient was admitted in hospital and her statement is to be recorded, hence, he went to the hospital. After Doctor examined the patient, Shitole asked the patient her name and made enquiry with her. Ujwala told him that her husband had consumed lots of liquor and had beat her. On 11.3.2008 at about 7 p.m. her husband assaulted her with sickle, then he poured kerosene from the stove on her and set her on fire with burning match stick. Ujwala told to Shitole that she was disabled in one leg, therefore, she could not run away. He read over the statement to Ujwala and she signed on the statement. The said dying declaration is at Exhibit 43.

6. The second dying declaration Exhibit 33 was recorded by PW-4 Police Constable Jadhav. He recorded the statement of Ujwala on 12.3.2008. He stated that he received information that one lady from Yeliv had sustained burn injuries, hence, he went to the hospital. He enquired with the Doctor whether the patient is in a condition to give her statement. Doctor examined the patient and told him that she is in a fit condition to give a statement. He then recorded the statement of the lady Ujwala as narrated by her in the presence of Doctor. The said dying declaration is at Exhibit 33 and it was treated as FIR.

7. Nothing has been elicited in the cross-examination of PW-4 Police Constable Jadhav and PW-5 Police Head Constable Shitole so as to cause us to disbelieve their testimony. We find that their testimony is totally trustworthy, hence, we have no hesitation in relying on the same. The evidence of PW-6 Dr. Mahajan corroborates the fact that Ujwala was conscious and in a fit condition to give dying declaration. PW-6 Dr. Mahajan has made endorsement on the dying declaration that patient was in a position to give statement.

8. The prosecution case is that the appellant set Ujwala on fire. This is fully supported by the medical evidence. PW-6 Dr. Mahajan conducted postmortem of dead body of Ujwala. Dr. Mahajan stated that Ujwala had sustained 72% burn injuries.

9. In addition to the two dying declarations Exhibits 33 and 43, the prosecution has also relied on the oral dying declaration made by Ujwala to her mother PW-2 Kantabai. Kantabai has stated that Ujwala was married to appellant. Ujwala was residing with the appellant at his village Yeliv. She has further stated that appellant used to assault Ujwala under the influence of liquor. The appellant was

suspecting that Ujwala was having relation with one Sanjay. On the day of incident, her grandson Akshay told her on telephone that Ujwala has received burn injuries and told her to come to Yeliv. Kantabai reached Yeliv at about 9 p.m. She saw her daughter had sustained burn injuries all over the body and her daughter was lying on a mat. She then took her daughter to the Civil Hospital at Satara in vehicle. Kantabai asked Ujwala as to how she had sustained injuries. Thereupon Ujwala told her that the appellant had poured kerosene from the stove on her and set her on fire due to which she sustained burn injuries. Ujwala further told that Akshay, her son, had extinguished the fire.

10. According to the prosecution, PW-3 Akshay, the son of appellant and deceased Ujwala, had witnessed the incident. Though he was examined as PW-3 by the prosecution, it is seen that Akshay has not supported the prosecution. Hence, his evidence is of no use to the prosecution. However, after going through the record, we find that there is sufficient evidence to show that the appellant poured kerosene on Ujwala and set her on fire. We see no merit in the appeal. Hence, the Appeal is dismissed.

11. At this stage, we must record our appreciation for Advocate Ms. Rohini Dandekar who is on the High Court Legal Services Committee and who was appointed to represent the appellant in this appeal. We found that she had meticulously prepared the matter and she has very ably argued the appeal. We quantify total legal fees to be paid to her in this appeal by the High Court Legal Services Committee at Rs. 5000/-.