
(2015) 07 BOM CK 0266
In the Bombay High Court
Case No : Criminal Appeal No. 353 of 1997

Chhaya Baba and Others	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 294
Penal Code, 1860 (IPC) — Section 302, 307, 34, 449, 452

Citation : (2016) 1 BomCR(Cri) 343

Hon'ble Judges : B.P. Dharmadhikari, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : Tejas Dande and Bharat Gadhavi, for the Appellant; Sangeeta D. Shinde, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.S. Gadkari, J—The appellants, original accused, have impugned the judgment and order dated 19th June 1997 passed by IVth Additional Sessions Judge, Satara in Sessions Case No. 86 of 1996 thereby convicting them for an offence punishable under Section 449 and 302 read with Section 34 of Indian Penal Code. They have been sentenced to undergo R.I. for three years and to pay fine of Rs. 1000/- each and in default of payment of fine to undergo S.I. for six months for offence punishable under Section 449 of Indian Penal Code. They have been also sentenced to undergo imprisonment for life and to pay fine of Rs. 1000/- each and in default of payment of fine to undergo S.I. for one year each, for the offence punishable under Section 302 of the Indian Penal Code. The Trial Court has ordered that the substantive sentences shall run concurrently.

2. The present appeal was admitted by the Division Bench of this Court on 30th June 1997 and the appellants were directed to be released on bail during the pendency of the appeal. The record further discloses that the original accused no. 2-Smt. Sonabai Bhau Mane expired on 7.10.2000 and the report to that effect has been forwarded by the Additional Sessions Judge, Satara dated

1.7.2015. Thus, the original accused no. 1 Smt. Chhaya Shivaji Mane is the only appellant in the present appeal.

3. The prosecution case in brief is that, the present appellant was the co-sister of deceased Smt. Shalan Dhondiram Mane. The original appellant no. 2-Smt. Sonabai was the mother-in-law of the appellant no. 1 herein and deceased Smt. Shalan Dhondiram Mane. That Smt. Sonabai Mane is having two sons namely Dhondiram and Shivaji. That deceased Shalan and the appellant no. 1 Chhaya are the wives of the said two sons respectively. The deceased Shalan was residing in the adjoining house of the appellant at post Manewadi, Taluka Patan, District Satara. That there was a matrimonial discord between the deceased Smt. Shalan and her husband Dhondiram and therefore deceased Shalan was alone residing at Manewadi, Taluka Patan, District Satara. Her husband Dhondiram was working in the Press at Mumbai and as there was a discord between them, he was not coming to the village. The date of incident in the present case is 20.2.1996. There was no issue arising out of the said wedlock. Shivaji was the younger brother of Dhondiram. Shivaji was residing at the said village i.e. Manewadi, Taluka Patan, District Satara with his wife and his mother Smt. Sonabai. The original accused no. 2 Smt. Sonabai was the owner of eight acres of land and she mutated the said land in the name of her younger son Shivaji. That deceased Shalan used to demand partition of her share and therefore the original accused persons namely the appellant no. 1 and the appellant no. 2 (deceased Smt. Sonabai) used to harass the deceased Shalan on that count.

4. It is the further prosecution case that on 20.2.1996 at about 9 a.m. in the morning the deceased Shalan after taking her meal was sitting in her room and was cursing the appellants in filthy language as the original accused/appellants did not give her share in the landed property by effecting partition. The said curses in filthy language were heard by her mother-in-law i.e. the original accused no. 2 and the present appellant i.e. her co-sister. Thereafter the said ladies came into the house of Smt. Shalan and questioned her as to why she was abusing in filthy language to them. At that time, the present appellant no. 1 i.e. Smt. Chhaya took a can filled up with kerosene and poured on the person of deceased Shalan. The original accused no. 2-Smt. Sonabai had caught hold of the deceased Shalan. That the appellant herein i.e. Smt. Chhaya ignited a match stick and set ablaze Smt. Shalan because of which Smt. Shalan was engulfed into the flames. Smt. Shalan came out of house and started shouting because of the pains. The neighbours came to her rescue. They extinguished the fire. As Smt. Shalan was burned substantially, her mother-in-law i.e. the original accused no. 2 Smt. Sonabai admitted her in Krishna Charitable Hospital at Karad on 20.2.1996.

5. That Smt. Shalan succumbed to injuries on 4.4.1996. The Medical Officer has given the cause of death as "Septicemic shock following 56% deep burn injuries". Post-mortem examination of Smt. Shalan was conducted on 9.4.1996 at Cottage Hospital, Karad and cause of death of deceased Smt. Shalan as is

mentioned in Postmortem notes is "Septicemic shock following 56% infected burn injuries". During the intervening period from 20.2.1996 to 4.4.1996, the Investigating Agency recorded three dying declarations of Smt. Shalan i.e. (i) dated 20.2.1996 (Exhibit 39), (ii) dated 27.2.1996 (Exhibit-51) and (iii) dated 2.3.1996 (Exhibit 33).

6. Mr. Mohan Bhosale (PW-10), Assistant Sub-Inspector who was on duty at Krishna Charitable Hospital, recorded the first dying declaration which is at Exhibit 39 immediately after the admission of Smt. Shalan to the said hospital. He thereafter forwarded the said dying declaration to Shri Kashinath Katte (PW-11) Police Sub Inspector, who was then attached to Karad City Police Station. On the basis of the said dying declaration, he registered C.R. No. 4 of 1996 for offences punishable under Sections 452, 307 read Section 34 of Indian Penal Code. After the death of Smt. Shalan, he added Section 302 of Indian Penal Code to the said crime. He recorded statements of witnesses, collected inquest panchanama, PM Notes and other relevant documents. After completion of investigation, he submitted chargesheet in the Court of Judicial Magistrate First Class, Patan.

7. The Judicial Magistrate First Class, Patan committed the case to the Court of Sessions at Satara in view of the provisions of Section 209 of Cr. P.C. as the offence under Section 302 was exclusively triable by the Court of Sessions. The Trial Court framed charge below Exhibit 4 for the offence punishable under Sections 449, 452 and 302 read with Section 34 of Indian Penal Code. The said charge was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. The defence of the accused was of total denial. According to the accused persons, it was an accident due to which Smt. Shalan got burnt. The accused persons admitted various documents as contemplated under Section 294 of Cr. P.C. during the course of trial and particularly the Post-mortem notes, medical certificate and other documents. They admitted their inter se relations with deceased Smt. Shalan. They also admitted that the deceased Smt. Shalan was residing in the adjoining room of the same house. The learned Trial Court after recording the evidence and after hearing the parties to the said case has convicted the appellants as stated hereinabove.

8. The present case is based on three written dying declarations given by deceased Smt. Shalan which are at Exhibits 39, 51 and 33 dated 20.2.1996, 27.2.1996 and 2.3.1996 respectively. Apart from the aforesaid three dying declarations, there was an oral dying declaration given to PW-2 Smt. Kalabai Bandu Mane, the neighbour of deceased Smt. Shalan. There is also a panchanama of scene of offence dated 21.2.1996 which is at Exhibit 44. The said Exhibit 44 has been proved by the Investigating Officer Shri Kashinath Katte (PW-11). The said panchanama of scene of offence which is at Exhibit 44 is a corroborative piece of evidence to the dying declarations of Smt. Shalan. In the said panchanama, it was found that there was a plastic can having little kerosene

in it. It also mentions about the smell of kerosene and broken pieces of bangles at the spot. It also mentions about the pieces of burnt saree which were found on the said spot. The prosecution has relied upon the scene of offence panchanama which is at Exhibit 44, as a corroborative piece of evidence to the dying declarations given by Smt. Shalan.

9. The first dying declaration was recorded by PW-10 Shri Mohan Bhosale, A.S.I who was then attached to Karad Police station. PW-10 in his testimony has stated that on 20.2.1996, he was on duty at Krishna Charitable Hospital. That the police station officer of Karad Police station asked him to record statement of one Shalan. He went to the Ward No. 11 of the said hospital and met the Medical Officer of the said ward. He made enquiry with the Medical Officer as to whether Shalan was conscious and able to talk and he could record her statement there. Thereafter he recorded statement of Shalan in the presence of Medical Officer. In her statement, Smt. Shalan told him that on 20.2.1996 at 9.00 a.m, she was abusing her mother-in-law and her co-sister (her husband's brother's wife) as they were not giving her share in the land to her. Smt. Shalan further told him that her mother-in-law and co-sister came to her house. That her mother-in-law caught hold of her and her co-sister poured kerosene on her person and ignited the fire with match stick. Thereafter he obtained her signature on the same. The said statement is at Exhibit 39. The Medical Officer made an endorsement on the said dying declaration. That the patient was conscious and able to give statements.

10. Though no material in the detailed cross-examination of this witness has been elicited by the appellants which would help them, the learned Counsel for the appellant drew our attention to the fact that on the said dying declaration which has been treated as first information report, the victim Smt. Shalan has put her thumb impression and she has not signed the statement as has been stated by PW-10 in his examination-in-chief. It appears to us that the mention by PW-10 about the fact that he obtained signature of Smt. Shalan on the said dying declaration is a minor omission which is not at all helpful to the appellant herein.

It is to be noted here that Smt. Shalan had received 56% burn injuries and as per the evidence of the Medical Officer, she was in conscious state of mind to give statement to the police officers.

11. The second dying declaration of Smt. Shalan was recorded on 27.2.1996 by PW-12 Shri Shankarrao Kadam, Special Executive Magistrate. PW-12 in his testimony has stated that on 27.2.1996 he received a yadi (requisition) from Karad police station at 10.45 a.m. for recording statements of Smt. Shalan D. Mane. After receipt of the said yadi, he along with police went to Krishna Charitable Hospital and met doctor. He asked doctor whether the patient was in a state of making the statement and requested doctor to certify accordingly. The doctor accordingly certified on the said yadi. The said certification by doctor is at Exhibit 50. The doctor told PW-12 that the patient was conscious and he could

record her statement. PW-12 has further stated that, he asked the patient her name. On being asked how she was burnt and whether she is having enmity with anybody, the patient Smt. Shalan told PW-12 that her mother-in-law held her hands and her co-sister (husband's brother's wife) poured kerosene on her person and lit the match stick. PW-12 has stated that Smt. Shalan has told the name of her mother-in-law and co-sister as persons responsible. PW-12 recorded her say as per the say of Smt. Shalan. After completing the said statement, he read over it to her and then obtained her thumb impression on the said dying declaration which is at Exhibit 51. After recording the said dying declaration, he put the said dying declaration in a sealed envelope which was kept in the custody of Mamlatdar. The said envelope is at Exhibit 52. PW-12 has further stated that he had taken carbon copy of the said dying declaration which was prepared by keeping the carbon paper below the original dying declaration. PW-12 has proved the said Exhibits 50, 51 and 52.

In the cross-examination of this witness, he has reiterated that when he recorded the statements of Smt. Shalan, no relatives of the said patient were present nearby. That when he recorded the said statements, the mother and brother of Smt. Shalan were not present. In the cross-examination, no omission or any admission which is useful to the appellant has been elicited at the instance of this witness.

12. PW-6 is Shri Hinduro Detake, the Special Executive Magistrate who was then working as Avval Karkun at Tahsil office, Karad has recorded the third dying declaration dated 2.3.1996 of Smt. Shalan Mane. PW-6 in his testimony has stated he was working as Avval Karkun at Tahasil office, Karad and was entrusted with the work of recording of dying declaration. That on 2.3.1996, he received a letter from Karad Police station requesting him to record the dying declaration of Smt. Shalan D. Mane who was admitted for burns in Krishna Charitable hospital. The said letter is at Exhibit 32. From the jeep sent by the police, he went to Krishna Charitable hospital in ward no. 11 which was situated on the third floor. He met the Medical officer and asked him whether the patient was conscious and in a state to make the statement. The Medical Officer told that he could record the dying declaration. The Medical Officer made endorsement in the margin accordingly. He then went to the said ward and asked the relatives of Smt. Shalan to go outside. The policeman was standing outside the ward. He told Smt. Shalan that he was Executive Magistrate and wanted to record her dying declaration. He asked her questions and thereafter Smt. Shalan answered it, he noted down the answers given by her. PW-6 has further stated that Smt. Shalan was conscious while she was making statements. He asked her about her name and residence. After Smt. Shalan told him about the same, he recorded it. While recording his evidence i.e. examination-in-chief this witness has stated that he did not remember as what Smt. Shalan had stated. After the dying declaration which is at Exhibit 33 was shown to him, he recollected the facts and has stated that the said statement was recorded by him. That Smt. Shalan told him that she was abusing her mother-in-law and relatives at about 9 a.m. on 20.2.1996

including her husband and her husband's brother. While she was abusing her mother-in-law held her hands and her co-sister i.e. Shivaj's wife Chhya (i.e. appellant herein) poured kerosene on her and set her on fire. PW-6 has stated that Smt. Shalan has further stated that her husband, her mother-in-law and her husband's brother's wife made criminal conspiracy and tried to finish her. That PW-6 reduced the said statements in writing accordingly to say of Smt. Shalan and thereafter he obtained her thumb impression. The said dying declaration is at Exhibit 33.

In the cross-examination, this witness has admitted that he cannot tell the name of the Medical Officer to whom he met in the hospital. He has further admitted that he obtained endorsement of the Medical Officer in the margin on the blank paper. He has further admitted that he did not make any enquiry about the person who was sitting near the patient i.e. Smt. Shalan, however, he felt they were her relatives. That only one lady was present along with the patient. He has further admitted that he required only five minutes to record the statement of Smt. Shalan.

13. PW-13 is Dr. Nishikant Gujar then was attached to Krishna Charitable Hospital at Karad as a resident doctor in Surgery department. PW-13 is the Medical Officer who has attested all the three dying declarations in his capacity as a Medical officer. PW-13 in his testimony has stated that on 20.2.1996 at about 11.00 a.m. one patient by name Smt. Shalan D. Mane, the resident of Manewadi, Taluka Patan was admitted in the said hospital for burns. The patient was having 56% burns. She was conscious and able to talk that A.S.I. Mohan Bhosale (PW-10) had been to him and told that he is going to record statement of Smt. Shalan. He along with A.S.I. Shri Bhosale and another person went to the Intensive Care unit of the hospital. He examined the patient and the patient was conscious and able to talk. He informed ASI Shri Bhosale accordingly and told him that he can record the statement of the patient. Shri Bhosale (PW-10) made enquiry with the patient and accordingly recorded the statement. PW-13 certified in the margin before recording the statement of the patient that the patient was conscious and able to make statement. (this is the first dying declaration which is at Exhibit 39). PW-13 has further stated that he was present all along with while statement of Smt. Shalan was being recorded by Shri Mohan Bhosale (PW-10). PW-13 Dr. Gujar has further stated on 27.2.1996 the Executive Magistrate (PW-12) had been to the hospital for recording statement of Smt. Shalan. The Executive Magistrate Shri Kadam asked him whether Smt. Shalan was conscious and was in condition to give a statement. PW-13 went to ICU and examined the patient. That the patient was conscious and was in condition to give a statement. The Executive Magistrate Shri Kadam recorded the statement in his presence. He certified on the letter given by the Executive Magistrate that the patient is in a state of giving statement. The Executive Magistrate then recorded the statement of patient Smt. Shalan. The said statement is at Exhibit 51 and the endorsement of the said PW-13 is at Exhibit 50. (this is second dying declaration which is at Exhibit 51). PW-13 has further stated that on 2.3.1996,

the Executive Magistrate Shri Hindurao Detake came to him and told him that he wanted to record the statement of Smt. Shalan Mane. He went to ICU and examined Smt. Shalan and found that she was in a condition to make statement. The Executive Magistrate thereafter recorded the statement of Smt. Shalan. After recording her statement, the doctor made endorsement that patient is able to make statement and she was conscious. Exhibit 33 is the said dying declaration recorded by the Special Executive Magistrate (PW-6). This is the third dying declaration made by Smt. Shalan.

In the cross-examination, this witness has admitted that he has not mentioned either the date or time below certificate which is Exhibit 39 (i.e. the first dying declaration). In his cross-examination, this witness has stated that between 5 to 6 p.m. on 20.2.1996, the patient was also conscious. In his cross-examination he has denied the suggestion that the mode of writing and signature of Exhibits 39, 51 and 33 are different. He has further denied the suggestion since the time of admission the patient was unconscious all day.

14. PW-11 is Shri Kashinath Katte, PSI is the Investigating Officer of the crime. PW-11 in his testimony has stated that on 20.2.1996 he received dying declaration of Smt. Shalan D. Mane from Karad City police station. On the basis of the same, he registered C.R. No. 4 of 1996 for the offences punishable under Section 452, 307 read with Section 34 of Indian Penal Code. He investigated the said crime. That on 21.2.1996 he went to Manewadi and made panchanama of scene of offence. He found broken pieces of bangles and burnt pieces of Sari, kerosene can. He also noticed the ground of the said room was also burnt. The said spot panchanama is at Exhibit 44. He recorded statements of four witnesses. After the expiry of Smt. Shalan, he collected the inquest panchanama on 9.4.1996 and added Section 302 to the said crime no. 4 of 1996. After completion of the investigation, he submitted chargesheet in the Court of Judicial Magistrate First Class, Patan.

15. In the cross-examination, this witness has admitted that on 20.2.1996 at 5.00 p.m. he had been to the hospital in order to record the statement of Smt. Shalan., but she was not in a condition to make statement and the doctor did not permit him to record the statement. However, in the further cross-examination, this witness has admitted and clarified that on 23.2.1996 he had been to the hospital, Smt. Shalan talked to him and verified her statement recorded by Shri Mohan Bhosale (PW-10) on 20.2.1996. Apart from above admission, no other omission or admission has been elicited from this witness which would be helpful to the appellant.

16. PW No. 2 Smt. Kalabai Mane is the neighbour of deceased Smt. Shalan and the appellant. PW No. 2 in her testimony has stated that she knew Smt. Shalan, wife of Dhondiram Mane. That Smt. Shalan was residing near her house. That Smt. Shalan was staying separate, while the appellant was staying with her mother-in-law. That Smt. Shalan was staying in outer portion, while the appellant was staying in the inner portion of the house. Smt. Shalan was doing

labour work. That the day prior to incident i.e. on Monday at about 2 p.m. quarrel took place between Smt. Shalan on one side and her brother-in-law and mother-in-law on the other side. After some time, Smt. Shalan told the said fact to PW No. 2. PW No. 2 advised Smt. Shalan and sent her back to her house. That on Tuesday at about 9.30 a.m. she saw Smt. Shalan coming out of her house and was shouting that her mother-in-law and her co-sister set her on fire by pouring kerosene on her person. PW No. 2 thereafter went to the village Dhamani and informed the said fact to the mother of Smt. Shalan. According to us this is the oral dying declaration of Smt. Shalan heard by the PW No. 2 Smt. Kalabai Mane.

In the cross-examination, this witness has denied the suggestion that Smt. Shalan did not raise any shouts and she was set on fire by her mother-in-law and co-sister by pouring kerosene on herself. In the rest of the cross-examination, no material which is beneficial to the accused has been brought on record.

17. Taking into consideration the entire evidence on record, the learned Counsel for the appellants submitted that the first dying declaration dated 20.2.1996 creates strong suspicion in the mind and in view of the admission given by PW-11 that he when he went to the hospital on 20.2.1996 at about 5 p.m. the victim Shalan was not in a condition to talk and make a statement. It is to be noted here that after the incident in the morning, Smt. Shalan was immediately shifted to the hospital and PW- 10 who was on duty at Krishna Charitable Hospital, Karad immediately recorded her first dying declaration on the same day. After receipt of the said first dying declaration which is at Exhibit 39, PW-11 went to the hospital at about 5.00 O'clock in the evening and therefore even if it is assumed that Smt. Shalan was not in a condition to give a statement at 5.00 p.m., her first dying declaration was already recorded by PW-10 in the morning itself. As far as the other contentions of the learned Counsel for the appellant is concerned, the third dying declaration which is at Exhibit 33 recorded by PW-6 Shri Hinduro Detate is concerned, in his cross-examination this witness has admitted that while recording the said dying declaration the relatives of Smt. Shalan were present and he obtained the endorsement of the Medical Officer on a blank paper in the margin.

18. We have perused the original dying declaration which is at Exhibit 33 and we have noted that the endorsement is properly made at the end of the said dying declaration on the left side of the said document. It appears that there is variance in the mentioning of the witnesses about the place of making the said endorsement. We may further note here that even if we presume that the third dying declaration recorded by PW-6 on 2.3.1996, is hit because of tutoring by the relatives to the said victim Smt. Shalan as the said PW-6 has admitted in the cross-examination about the presence of relatives at the place, the other two dying declarations at Exhibits 39 and 51 are consistent on facts and they inspire confidence in the mind of Court.

19. As stated above, the other two dying declarations given by Smt. Shalan

which are at Exhibit 39 and 51 recorded by PW-10 and PW-12 respectively, are consistent in its nature. Smt. Shalan is consistent with respect to fact of incident and pouring and igniting it by match stick by the appellant herein. There is no variance at all in her version in the said two dying declarations. We are of the considered opinion that said two dying declarations of Smt. Shalan inspire confidence about its truthfulness in the mind of this Court and said two dying declarations can safely be relied upon while basing the conviction. Apart from the abovesaid two written dying declarations there is also an oral dying declaration given by the deceased Smt. Shalan to Smt. Kalabai Mane (PW-2) immediately after she was set on fire by the appellants. The said oral dying declaration of Smt. Shalan to Smt. Kalabai Mane (PW-2) is also reliable and trustworthy.

20. As stated herein above, the dying declarations particularly which are at Exhibit 39 and 51 are consistent in its version and there is no veracity in the fact of the incident of burning by the appellant of the said deceased Smt. Shalan and according to us both these dying declarations are reliable and trustworthy.

21. Thus, after taking into consideration the entire evidence on record, we find that the Trial Court has not committed any error either in law or on the facts in the present case and the present appeal being sans of any merits is liable to be dismissed and is accordingly dismissed.