
(2022) 08 BOM CK 0088

In the Bombay High Court

Case No : Criminal Revision Application No. 369 Of 2004

Dagadusing

APPELLANT

Vs

Manojising And Others

RESPONDENT

Date of Decision : 22-08-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 498A
Evidence Act, 1872 — Section 32

Citation : (2022) 08 BOM CK 0088

Hon'ble Judges : Bharat P. Deshpande, J

Bench : Single Bench

Advocate : Chaitanya C. Deshpande, Rekha Choudhari, S. S. Choudhari, G. L. Deshpande

Final Decision : Allowed

Judgement

Bharat P. Deshpande, J

1. Vide order dated 14.03.2006 rule was issued.
2. The applicant is the father of the deceased Seema who married with respondent No. 1 on 21.02.2000. However, she succumbed to the burn injuries on 23.03.2000. The incident occurred in the house of the accused persons. The deceased Seema sustained 81% burn injuries. The statement of deceased Seema recorded by the Police Officer in the hospital was considered as FIR. On the same day, her dying declaration was recorded by the Special Executive Magistrate wherein, she implicated accused persons for her death. Therefore, the FIR was lodged vide Crime No. 27/2000 at Parbhani Police Station, initially under Sections 307, 498-A r/w Section 34 of the Indian Penal Code (for short "IPC"). Upon death of victim Seema, Section 302 of the IPC was added.
3. After completion of the investigation, charge-sheet was filed against the accused persons. The case was committed to the Court of Sessions. The charges were framed against the accused and thereafter prosecution examined the

witnesses in order to prove such charges. After completion of the trial, the learned Additional Sessions Judge, Parbhani vide its judgment dated 26.07.2004 acquitted all the accused persons for the offence punishable under Section 302 r/w Section 34 and Section 498-A r/w Section 34 of the IPC.

4. The State through Parbhani Police Station did not file appeal challenging such acquittal. Therefore, the father of victim preferred present revision challenging the acquittal on various grounds as disclosed in the revision application.

5. The record and proceedings were called and thereafter, the matter was taken up for final disposal.

6. Heard Mr. Deshpande, learned counsel for the applicant, learned APP for the State and Smt. Choudhari, learned counsel for the respondent Nos. 1 to 5.

7. With the assistance of the learned counsel appearing for the respective parties, I perused the entire record and more specifically the findings of the learned Trial Court while acquitting all the accused persons.

8. The learned counsel appearing for the applicant forcefully submitted that deceased died in suspicious circumstances in the matrimonial house. She sustained 81% burn injuries. Such incident took place within a period of one (01) month from the marriage of the deceased with accused No. 1. When she was admitted in the hospital on the day of incident i.e. 23.03.2000, her statement was recorded by the Police wherein, she implicated all the accused persons and such statement was considered as FIR. Similarly, on the same day dying declaration of the deceased Seema was recorded by the Special Executive Magistrate. The Doctor opined that deceased Seema was in a fit state of mind to give her statement. In this dying declaration she further implicated accused persons for her death. The deceased Seema succumbed to the burn injuries on the same day. Both these dying declarations were rejected by the learned Trial Court on giving reasons which are not acceptable and against the settled proposition of law. He then submitted that observations of the learned Trial Court regarding accidental death are on the basis of surmises and conjectures and not based on the material placed before it. He submitted that spot panchanama, inquest panchanama and the post mortem report were admitted by the defence. The spot panchanama is in the kitchen of the house of the accused. Therefore, it was for the accused persons to explain as to how deceased suffered 81% burn injuries. He then submitted that the learned Trial Court failed to come to the conclusion that death of deceased Seema was not homicidal. The discussion in the judgment is not conclusive to that effect. He therefore, prayed that the judgment needs to be quashed and set aside and the matter needs to be remanded for fresh consideration.

9. Per contra, learned counsel appearing for the respondent Nos. 1 to 5 tried to defend the reasons given by the learned Trial Court in its judgment. She submitted that the duty of prosecution is to prove the charges levelled against accused beyond all reasonable doubt. The evidence on record is clearly short of

any specific proof regarding ill treatment, demand of dowry or even causing death of Seema due to burn injuries by the accused persons. She therefore, submitted that in the revisional jurisdiction this Court should not interfere with the findings of facts by re-appreciating evidence.

10. The learned APP appearing for the State submitted that such findings with regard to the aspect of homicidal death are not proper and she supported the submissions advanced by the learned counsel for the applicant. The learned APP then submitted that though there was movement for filing appeal against the impugned judgment, unfortunately no appeal was filed by the State.

11. The only point for consideration in the present revision is whether the findings of the learned Additional Sessions Judge are considered as perverse and against the settled proposition of law so as to interfere within the revisional jurisdiction.

12. In order to consider this aspect, it is necessary to look into the charges levelled against accused persons. Exhibit-31 are the charges framed against accused Nos. 1 to 5. The first charge is with regard to the offence under Section 302 r/w Section 34 of the IPC and the second charge is regarding ill treatment under Section 498-A r/w Section 34 of the IPC. All the accused persons denied both charges and thereafter the matter posted for trial.

13. The prosecution examined in all eight witnesses which includes PW-1 – (father of the victim) i.e the applicant herein, PW-2 – Smt. Pushpa (sister of the victim), PW-3 – Smt. Usha (another sister of the victim), PW-4 – Ramrao (Special Executive Magistrate), PW-5 – A.S.I. Tukaram Pawar, PW-6 – Dr. Ramesh, PW-7 – Dr. Bhagwan and PW-8 – A.P.I. Vijaykumar. In all nine documents in evidence were produced which include spot panchanama at Exhibit-41, inquest panchanama at Exhibit-42, report given by the applicant dated 22.04.2000 at Parbhani Police Station, statement/dying declaration recorded by the Special Executive Magistrate at Exhibit-52, statement/dying declaration recorded by A.S.I. Tukaram at Exhibit-54, Memorandum of post mortem examination at Exhibit-56, letter dated 23.03.2000 by Dr. Bhagwan – PW-7, Office copy of the forwarding letter by P.S.I. Rural Police Station, Parbhani to Chemical Analyser, Aurangabad and the C.A. reports at Exhibit - 62 and 63. No evidence in defence was adduced by the accused persons.

14. Though the learned Additional Sessions Court framed the points in paragraph No. 7 and recorded its findings in paragraph No. 8, the reasons are not separate and distinct, but it is combined to all six points framed for determination.

15. It is admitted fact that, the deceased Seema was married with accused No. 1 on 21.02.2000. She resided with the accused persons only for few days. Thereafter, Seema went to her parents house on 27.02.2000 and returned to her matrimonial house on 10.03.2000 with accused No. 1. On 23.03.2000, Seema sustained fatal burn injuries in her matrimonial house during morning hours and that too in the kitchen. She was immediately shifted to Civil Hospital, Parbhani.

Doctor found that she sustained 81% burn injuries. The post mortem report which is admitted by the accused persons shows cause of death as "Cardio respiratory arrest due to P.C.F. due to 81% burn". The spot panchanama at Exhibit-41, inquest panchanama at Exhibit-42 were admitted by the accused.

16. The case of the prosecution is based on circumstantial evidence as there is no eye witness to the incident. However, first statement of the victim was recorded in the hospital itself by A.S.I. Pawar (PW-5) which is at Exhibit-54. On the same day, the Special Executive Magistrate recorded dying declaration of the victim which is at Exhibit-52. Thirdly, there is oral dying declaration made by the victim to her sister Usha on 23.03.2000.

17. With this material produced on record, the learned Trial Court disbelieved the prosecution witnesses and even considered that death of Seema was not homicidal and that the same could have been accidental. The learned Additional Sessions Judge found that there was no possibility of ill treatment at the hands of the accused persons since the deceased hardly resided in their house and she succumbed to the burn injuries within a period of one month from the date of her marriage. It was further observed that, the parties were knowing to each other as the sister of the deceased was already married in the family of the accused persons. It was a settled marriage. With these observations, the learned Trial Court rejected the entire case of prosecution and acquitted all the accused persons.

18. As discussed earlier, two charges were levelled against the accused persons as found recorded at Exhibit-31. The first charge is that the accused persons in furtherance of common intention committed murder by intentionally or knowingly causing death of Smt. Seema and thereby committed an offence under Section 302 r/w Section 34 of the IPC. The second charge is that all the accused persons in furtherance of their common intention subjected Smt. Seema to cruelty by willful conduct of such nature as was likely to drive her to commit suicide and thereby committed an offence punishable under Section 498-A r/w Section 34 of the IPC.

19. Perusal of the impugned judgment shows that the learned Additional Sessions Judge mixed up both these charges while discussing points framed in paragraph No. 7. He ought to have discussed the charge No. 1 and charge No. 2 separately.

20. Charge No. 1 is in connection with committing murder with common intention whereas, charge No. 2 is subjecting the victim to cruelty so as to drive her to commit suicide.

21. Entire discussion in the impugned judgment is moving around the aspect of alleged cruelty. The learned Additional Sessions Judge completely lost the side of the fact that there are two different charges levelled against accused and evidence ought to have been discussed separately by considering the material placed before it. The reasoning is centered around the aspect of alleged cruelty

or ill treatment which has been disbelieved and only on that count the learned Additional Sessions Judge observed that prosecution has failed to prove that it was homicidal death.

22. Another important aspect is non consideration of admitted documents while giving reasons in the judgment. The observations of the learned Trial Court show that accused admitted the contents of spot panchanama, inquest panchanama and the post mortem examination report. Once these documents are admitted by the defence, contents of it are required to be considered for the purpose of proving charges levelled against accused.

23. Similarly, there is glaring misconception on the part of the learned Trial Court in presuming that it was accidental death. In fact, the circumstances which are brought on record by the prosecution clearly goes to show that victim sustained 81% burn injuries in the kitchen during morning hours. Thus, what happened in the kitchen or inside the house of accused is only known to the accused persons. The prosecution was able to establish through the panchanama of the scene of offence that the spot of incident is in the kitchen. Hence, the learned Trial Court ought to have considered the conduct of the accused persons as accused were supposed to explain as to how the deceased caught fire since there is no eye witness to the incident.

24. The panchanama of the scene of offence is an admitted document which is clear from the record as well as the judgment of the learned Trial Court. Careful perusal of panchanama at Exhibit-41 shows that it was conducted on 23.03.2000 and it started at 16.10 hours and concluded at 17.00 hours. It further shows that the spot is inside the house of the accused persons and by the side of main hall there is kitchen. There is wooden door to the kitchen. The kitchen is found to be 13×10 ft. Inside the kitchen, it was observed that there is one Almari (cupboard) in which there are some kitchen utensils and the material required for cooking. One refrigerator of red colour, one gas cylinder and gas stove was found on the Southern side. It was observed that, the floor of the kitchen was of black and white colour and at the centre of the kitchen one brass Kerosene stove and by the side of it there was one another Kerosene stove found. The lid of the brass stove tank was found open and the said lid/cover was found at the distance of two feet towards Western side. Near the stove one matchbox with the name of White Horse and on the floor at several places the burned pieces of cloth were found. It also discloses that in the entire kitchen room smell of Kerosene was observed. In all four items were attached as mentioned in the panchanama. Similarly, in front of the refrigerator they found one steel plate in which they found dough of flour for the purpose of preparing Chapatis.

25. This evidence which is admitted by the accused persons has been completely ignored and there is absolutely no discussion about the observations in the panchanama.

26. First of all, it is clear that, the deceased was recently married and she stayed

in the house of the accused persons only for 10-15 days. It is normal tradition that newly wedded girl or newly wedded wife is not supposed to start cooking independently for all the family members when there is a joint family residing in the house. For the simple reason that, the newly wedded wife is not expected to know the likes, dislikes, test, the type of food which is prepared in the family including the procedure adopted for preparing particular items. In the Indian culture, each family is having its own habits, likes, dislikes and the type of food which is normally prepared. A newly wedded wife is not supposed to know such habits of the family members so as to start independently and without any help preparing items. Normally, the elder female members of the family used to prepare food and the newly wedded wife is used to support by doing or helping them so as to know the culture, customs, likes, dislikes, the method of preparation of food in the house. Therefore, it is highly improbable that when there was a gas cylinder and gas burners were available in the house, why the deceased was trying to cook the food on the Kerosene stove and that too alone in the kitchen.

27. Further in the spot panchanama it is clearly observed that there was strong smell of kerosene coming in the kitchen. It has to be noted here that spot panchanama was conducted in the evening between 4.30 p.m. to 5.00 p.m. whereas, incident took place during morning hours i.e. prior to 10.00 a.m. Thus, after period of around 6-7 hours smell of kerosene was found emitting from the kitchen is one of the circumstance which shows that it was not the case of accidental burn. In case of accidental burn, there is hardly any possibility of presence of Kerosene smell in the kitchen. Presence of Kerosene smell in kitchen is only possible when it is poured. This specific material has been completely ignored by the learned Trial Court while discussing circumstances.

28. The learned Trial Court ignored two dying declarations on the ground that there is no statement recorded by the Doctor on it that the deceased was mentally fit to give statement. On the other hand, the learned Trial Court conveniently accepted the statement of the same Doctor who cursorily claimed that at the time of admission of the victim, history was given by her that she accidentally caught fire. These are two contrary findings. At one place, the statement of the Doctor given on oath before the Court stating that the victim was conscious and she gave statement to the Police Officer and also to the Special Executive Magistrate, has been disbelieved. However, another statement of the same Doctor during cross-examination regarding history given by the deceased at the time of admission is accepted. First of all, it is not clear from the statement of the Doctor that the history was given by the patient herself. She was brought by her relatives i.e. the accused persons. There is no mention in the deposition of Doctor that when he recorded the history, it was given by the patient herself and that she was mentally fit and conscious to give such statement.

29. At this stage, the decision of the Hon'ble Apex Court in the case of Laxman

Vs. State of Maharashtra reported in 2002 Cri.L.J. 4095 wherein, Hon'ble Bench of five Hon'ble Supreme Court Judges elaborately discussed the scope of Section 32 of the Evidence Act and more specifically dying declaration. In paragraph No. 5, the Hon'ble Apex Court observed thus :-

"5. The court also in the aforesaid case relied upon the decision of this Court in Harjeet Kaur v. State of Punjab, 1999 (6) SCC 545 case wherein the magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this Court in Paparambaka Rosamma and others v. State of Andhra Pradesh, 1999 (7) SCC 695 to the effect that ".....in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a magistrate who opined that the injured was in a fit state of mind at the time of making a declaration" has been too broadly stated and is not the correct enunciation of law. It is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this Court in Paparambaka Rosamma and others v. State of Andhra Pradesh, 1999 (7) SCC 695 must be held to be not correctly decided and we affirm the law laid down by this Court in Koli Chunilal Savji and another v. State of Gujarat, 1999 (9) SCC 562 case."

30. Above proposition has been completely ignored by the learned Trial Court while rejecting both dying declarations.

31. It is also necessary to note that, when both the dying declarations were recorded by the A.S.I. and the Magistrate, the father, mother and other relatives of the deceased were not present in the hospital. Therefore, trying to influence the deceased to give specific statement against accused persons is completely ruled out.

32. Admittedly, the entire matter is based on circumstantial evidence. The prosecution has established the circumstance that the deceased sustained 81% burn injuries in the kitchen wherein, the stove was found with open lid and the matchstick as well as burn pieces of cloths emitting the odour of Kerosene. These specific circumstances proved during the spot panchanama clearly ruled out possibility of accidental burn. Therefore, it was necessary for the accused persons to explain as to what happened in the kitchen on that day as this fact is only to the knowledge of the accused being the family members and due to their presence in the house. Non explaining such circumstance has to be considered as

against the accused which add to another circumstance in favour of prosecution.

33. It is no doubt true that, evidence which has been brought on record with regard to alleged ill treatment is not so strong, however, the aspect of ill treatment is completely separate and distinct from the charge levelled against the accused for commission of murder. At the most, the aspect of ill treatment or harassment as well as taunting to the accused that she was not fit in their house, she was of low intellect also amount to cruelty. Therefore, this is a fit case wherein, the jurisdiction of this Court required to be exercised.

34. Having said so, the observations of the learned Trial Court while acquitting accused persons on both the charges are considered to be perverse and against the settled proposition of law, and thus needs to be interfered with. Hence, the following order.

ORDER

(I) The revision application stands allowed.

(II) The impugned judgment in Sessions Case No. 131/2001 dated 26.07.2004 and acquittal of accused persons is hereby quashed and set aside. The matter stands remanded to the learned Trial Court with the direction to decide it afresh by giving opportunity to the prosecution and the accused persons to argue the matter, on the basis of material already placed during trial.

(III) Record and proceeding be returned to the learned Trial Court.

(IV) Parties are directed to appear before the learned Additional Sessions Judge, Parbhani on 26.09.2022. The Learned Additional Sessions Judge, Parbhani is directed to dispose of the said matter as expeditiously as possible and within a period of four (04) months from the date of first appearance of the parties.

(V) Rule made absolute in above terms.

(VI) Proceeding stands disposed of accordingly.