
(2002) 08 SC CK 0040

In the Supreme Court Of India

Case No : Criminal Appeal No. 1219 of 2000

Doryodhan and Another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 14-08-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 3, 302, 32, 34

Citation : (2003) 1 ACR 24 : (2003) 1 ALD(Cri) 4 : (2002) 8 JT 152

Hon'ble Judges : N. Santosh Hedge, J; B. P. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The prosecution case before the trial court was that appellant No. 2 Lobhabi, was married to one Pandurang Bedarkar about 17 years before the date of incident and she had two daughters by the said marriage, first one was Ratna, the deceased and the second one was Ashvina (P.W.4). It is also stated that the appellant No. 2 had left her husband and come to the village where her mother was residing and started living with appellant No. 1. The two children were living with the mother of the appellant No. 2, namely, Banabai, PW 5 along with her son Suresh PW 2. On the date of the incident the deceased and PW 4 were visiting their mother in the house where she was living with A1. It is the case of the prosecution that on the morning of 13th of May, 1994, the two appellants told the deceased to prepare their lunch and they went away to collect fire-wood and to graze the cattle. When they returned in the afternoon they found that the deceased has not cooked their lunch so becoming enraged appellant No. 1 allegedly beat up the deceased and took her to the dwelling hut next to the hut where he was living and poured kerosene on her and by the time appellant No. 2 came and set the deceased on fire, consequent to which the deceased suffered serious injuries. This incident was noticed by PW 4 second daughter of the appellant No. 2 who immediately ran to the house of PW 5 and told her grand mother and her uncle PW 2. Those two witnesses came running to the hut of the

appellant. At which time they found appellant No. 1 carrying the deceased in his hands. The further case of the prosecution is that on coming to know of this incident PW 3 police patil of the village came there and on inquiring from the deceased she told him that it is A1 who had beaten her up and poured kerosene on her and A2 set fire on her because she had not prepared lunch for them on that day. This statement made to PW 3 was in the presence of PW 6, PW 5 and some other villagers. Thereafter the prosecution alleges that the deceased was sent in the state transport bus to Amravati for treatment but she died late in the night. A complaint in this regard was lodged which was recorded by PW 10. Inspector incharge of police station who conducted further inquiry and on completion of the inquiry filed charge-sheet against the appellants for the offence punishable u/s 302 read with 34 IPC.

2. Learned sessions judge relying on the evidence of PW 4 and finding corroboration in the evidence of PWs 3, 5 and 6 found the appellant guilty and sentenced the appellants to undergo imprisonment for life u/s 302 read with Section 34 IPC. The High Court has confirmed the said sentence.

3. Shri S. Balakrishnan, learned senior counsel appearing for ,the appellant submitted that courts below erred in relying on the evidence of PW 4 who is the child witness and from the said evidence one could find that the said evidence is unnatural in as much as she has referred to her mother and her step father by their names. He also contended that courts below had relied upon the evidence of PWs 3 and 5 which also cannot be accepted, because of the discrepancies in their evidence Learned counsel submits from the facts narrated by the prosecution itself, it is clear that the deceased was having an affair with one Nasir because of which she was pregnant and the relationship between her and Nasir having failed she must have committed suicide.

4. We have considered the evidence of the courts below and from the evidence of PW 4 we notice that she has witnessed the incident and her narration of facts cannot be doubted. Her presence at the place of incident as a matter of fact is admitted by the defence and the only suggestion made to her as to her statement in the court is that she was influenced by PW 5 who was not in good terms with appellants, we are unable to accept this argument because of the fact that the children had come to visit their mother, which itself shows that they were not in enemical terms with their mother, in such a situation it is very difficult to accept that any one can influence a child to depose against her own mother falsely. The argument that she has referred to her mother by name in her evidence also cannot be accepted because we have perused the other evidence from which it is noticed that the recording of the evidence by the learned sessions judge has been in most of the cases was in the same format. At any rate if this objection were to be pointed out before the sessions court there would have been an opportunity for the court to appreciate the same, that having not been done it will be difficult to accept this evidence. Learned counsel also pointed out certain discrepancies in the evidence of PW 3 inasmuch as he according to

his evidence before the court stated that he had recorded the dying declaration of the deceased but he did not produce the same before the police and he produced this for the first time in the court. This discrepancy by itself can not create any doubt in our mind in regard to the dying declaration made by the deceased to PW 3 because the same was made in the presence of PW 5 and PW 6 out of whom PW 6 being an independent witness we think the evidence of PW 3 becomes acceptable. In our opinion the courts below have rightly accepted the ocular evidence of PW 4 which is further corroborated by evidence of PWs 2, 5 and 6. The suggestion that the deceased must have committed suicide on the ground that she was carrying child of Nasir cannot be accepted because the medical evidence does not support the same. On these facts and circumstances we are of the opinion that the judgments of the courts below cannot be interfered with.

5. Learned counsel there argued that taking note of the facts of the case, it is clear that the offence is not which is punishable u/s 302 and at the most it could be one u/s 304 Part 1 because it has come in evidence that first appellant after setting the deceased on fire poured water and tried to extinguish the fire. Having considered the entire prosecution case, we find it difficult to accept this argument and reject the same.

6. For the reasons stated above this appeal fails and the same is dismissed.