

(2004) 02 BOM CK 0049
In the Bombay High Court
Case No : Criminal Appeal No. 693 of 1999

Ganesh Narayan Bhumkar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 13-02-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307, 342

Citation : (2004) 2 DMC 59

Hon'ble Judges : V.G. Palshikar, J; P.V. Kakade, J

Bench : Division Bench

Advocate : P.P. Hudlikar and Milind Deshmukh, for the Appellant; V.R. Bhosale, APP, for the Respondent

Final Decision : Dismissed

Judgement

Kakade, J.—The appellant has preferred this appeal against the Judgment and Order dated 8th October, 1.999 passed by the Additional Sessions Judge, Baramati in Sessions Case No. 79 of 1998 wherein the appellant was convicted for commission of offence u/s 302 and 342 of the Indian Penal Code and was sentenced to suffer life imprisonment and to pay fine of Rs. 1000/- in default to suffer R.I. for nine months on first count and to suffer R.I. for six months and to pay fine of Rs.500/- in default to suffer R.I. for one month on second count. Both the sentences were directed to run concurrently.

2. The facts giving rise to the present case, in short, are thus -

3. The accused used to work as a driver in State Transport Corporation. Ranjana was the daughter of P.W.1 Leelabai. She married to the accused in the year 1980-81. After the marriage they were living together and they begotten two sons from their marriage. Thereafter accused married for the second time with one Jayashree. After the second marriage deceased Ranjana started residing with her grand-mother-in-law P.W.3 Gajarabai, at Indapur. Accused did not like her staying with Gajarabai. On 3.9.1998 accused went to the house of P.W.3

Gajarabai at about 5.45 p.m. Ranjana was alone at home. At that time accused closed the door of the kitchen from inside and told Ranjana that he would finish her and thereafter he would finish himself. After saying that accused poured kerosene upon Ranjana from the Stove and set her on fire. She shouted loudly and fell down. Brother of the accused opened the door. In the meantime other people came there and extinguished the fire. Brother of the accused took Ranjana in Indapur Rural Hospital.

Father-in-law of Ranjana, who was in Indapur, informed P.W.4 Bhoite, Head Constable about the incident and the fact that the accused and Ranjana were quarrelling in the house and were confined in the room. In the meantime the incident took place and Ranjana was taken to the hospital. P.W.4 Head Constable went to the hospital and ascertained from Dr. Dimbar about the fitness of Ranjana to give statement. On assurance from the Doctor that she was in a position to give statement Head Constable Bhoite recorded dying declaration of Ranjana vide Exh. 22. Thereafter he went to the Police Station and on the basis of the said statement registered the offence u/s 307 and 342 of the Indian Penal Code against the accused. The investigation commenced) in which course ASI Thube went to the spot and prepared panchanama. He seized incriminating articles including stove match box etc. from the spot of the incident under panchanama and recorded statement of various witnesses. In the meantime Ranjana was shifted from Indapur Rural Hospital to Sassoon Hospital, Pune. Dr.Nilesh Shimpi admitted her and Ranjana informed him that the accused poured kerosene on her person and set her on fire. The police were duly informed. P.W.E Head Constable Dhamale inquired with Dr. Shimpi about the health of Ranjana. After getting assurance from him that she was in a position to give statement, he recorded second dying declaration, Exh.30 in the hospital. In both the dying declarations Ranjana squarely implicated the accused person to be the culprit of the crime.

Ranjana died on 5.9.1998. Inquest panchnama was prepared and body was sent for post mortem examination. It was revealed that Ranjana was burnt 97% and it was found that she died due to shock due to burns. The accused was arrested on 5.9.1998. The offence was converted into Section 302 of the Indian Penal Code. The accused had also sustained burr injuries and was given medical treatment. On completion of the investigation the charge-sheet was sent to the court of law. The learned Magistrate committed the case to the court of Sessions.

4. The learned Additional Sessions Judge framed the charge against the accused for the offence punishable u/s 302 r/w 342 of the Indian Penal Code, to which he pleaded not guilty. The defence of the accused is that of total denial of any criminal liability. According to defences Ranjana committed suicide in presence of the accused in the kitchen, in the course of quarrel. In support of this version accused examined himself as a witness in order to establish the said defence theory. The prosecution led its evidence. On which basis the learned trial judge came to the conclusion that the evidence of the prosecution is sufficient to bring

home the guilt and also held that the defence theory was not acceptable in law and therefore, proceeded to convict and sentence the accused in aforesaid manner.

Hence the appeal.

5. We heard Mr. Hudlikar the learned counsel for the appellant and Mrs. Eihosale, the learned APP for the State at length. We have also perused the entire evidence on record.

6. It is to be noted that the prosecution case is based upon two dying declarations, which are duly corroborated by two oral dying declarations to witnesses viz. P.W.1 Leelabai, mother of the deceased Ranjana and P.W.3 Gajarabai, grand-mother of accused himself. P.W.4 Head Constable Bhoite had stated that when he received the information about earlier quarrel between the accused and the deceased and subsequent admission of Ranjana in the Hospital and contacted the Medical Officer, who was treating Ranjana in the hospital at Indapur. The medical officer examinee the patient and certified that the patient was conscious and was in a position to give statement. Thereafter he proceeded to record Ranjana's statement vide Ex.22 wherein she has categorically stated that the accused came in the house and closed the door and tale her that he was about to kill her and also he was killing himself. Thereafter the accused poured kerosene upon her from the stove and set her on fire with lit match. She shouted loudly and fell down. Thereafter the accused opened the door and went away, the people in the neighbourhood gathered and brother of the accused took her in the hospital. After recording the said statement Head Constable Bhoite obtained her signature on the statement. It was read over to her and she admitted the contents thereof were correct. This statement itself was sent to the police station on which basis the offence was registered and therefore, it must be said that this dying declaration Ex.22 also was treated as FIR by the police in respect of the said offence. This evidential aspect established by Head Constable Bhoite is supported by the Medical Officer Dr. Dimbar, P.W.7, who has stated that when Head Constable Bhoite came to the hospital and asked for permission to record the statement of Ranjana. He examined the patient and found that she was physically and mentally fit and thereafter police recorded her statement. The medical officer had stated that during the statement she was physically and mentally fit, conscious and oriented to give statement.

After her statement was recorded) it was obvious that Ranjana was in serious condition and therefore, was sent to Sassoon Hospital, Pune for further medical treatment. When she was admitted in Sassoon Hospital Head Constable P.W.8 Dhamale was on duty and seeing the serious condition of Ranjana he obtained permission from Doctor to record Ranjana's statement. Doctor examined Ranjana and certified that she was in a condition to give statement, and therefore. Head Constable Dhamale recorded dying declaration of Ranjana which was duly certified by the Medical Officer. In the second dying declaration also Ranjana had squarely implicated the accused person to be the culprit, who had

poured kerosene upon her and set her on fire. In other words, both the dying declarations are consistent on the fact that it was the accused, who poured kerosene upon Ranjana and set her on fire.

7. Mr. Hudlikar, the learned counsel for the appellant, urged that there were material discrepancies between the two dying declarations and therefore, those were not reliable. However, the perusal of both the dying declarations makes it clear that on material points there is absolutely no discrepancies, the only discrepancy which is found is that that in the first dying declaration Ranjana had stated that it was the accused opened the door and went out whereas in the second dying declaration she had stated that after hearing shouts, brother of the accused came and broke open the door and entered in the house, and thereafter poured water upon her and took her to the hospital. In our considered view, this so called discrepancy between the two dying declarations cannot be held to be fatal to the prosecution case at all especially, if we take into account the mental and physical condition of Ranjana, immediately after she was set on fire. In other words, when she was set on fire, obviously she was not in a position to observe whether it was accused or brother of the accused, who opened the door and entered the house. Therefore, in our considered view, this discrepancy cannot be held to be fatal to the prosecution case at all.

It was submitted on behalf of the appellant that both the dying declarations are recorded by the police personnel and the Special Executive Magistrate was not called. However, it is pertinent to note that Head Constable Bhoite had in fact sent & letter of request to the S.E.M. at Indapur vide Ex.21 requesting him to visit the hospital and record the dying declaration. This fact is proved by document Ex.21. However, it is obvious that Head Constable Bhoite proceeded to record dying declaration by himself in view of the fact that Ranjana was serious and he thought it fit not to wait for SEM. The omission to bring SEM is also apparently explained by the fact that she was moved to Sassoon Hospital, Pune, as she was serious. However, this aspect would not change the prosecution case at all especially in view of the consistent dying declarations given by Ranjana. It is well settled legal principle that dying declaration recorded by police personnel cannot be discarded on that ground alone because there is no requirement of law that dying declaration must necessarily be made to Magistrate. What is necessary in this regard is to find out that the dying declaration is reliable and genuine which can be ascertained from surrounding evidential circumstances. In the present case not only there are two consistent dying declarations on record but both are again corroborated by oral dying declarations given by Ranjana before witnesses.

8. P.W.1 Leelabai, mother of deceased Ranjana, has stated that when she came to know about the incident she went along with her two sons and relatives to Sassoon Hospital, Pune at 2.00 in the night and met Ranjana. When asked how it had happened, she was informed that it was the accused, who poured kerosene on her and set her on fire. She was further informed by Ranjana that accused

had set her on fire for the estate of his grand-mother. P.W.3 Gajarabai, grand mother of accused has also deposed before the court, from whose evidence it is clear that she held some estate. It is admitted position that Ranjana used to live with Gajarabai. Gajarabai has deposed that when she came to know about the incident in the evening immediately after the occurrence of the incident and Ranjana was taken to Indapur Hospital. She told Gajarabai in Indapur Hospital that the accused had set her on fire. Ranjana thereafter was shifted to Sassoon Hospital, Pune.

In our considered view, even if oral dying declaration given to P.W.I Leelabai is said to be accepted with caution, because she is mother of Ranjana, oral dying declaration given to P.W.3 cannot be ignored because she is grand-mother of the accused himself. No grand-mother would involve her grand-son falsely in a case like murder unless it is true. Therefore, in our view, both the oral dying declarations are said to be reliable and are in corroboration to two consistent written dying declarations recorded of Ranjana, in which course she has implicated the accused to be the author of the crime. It is a defence theory, as revealed by the written statement filed by the accused u/s 313 of Cr.P.C. as well as in the course of his testimony where he has examined himself as defence witness, to the effect that it was Ranjana, who set herself on fire and accused tried to douse the flames, due to which he also suffered injuries. In his evidence he has stated that at about 5.00 p.m. on the day of the incident he went to the house of Ranjana at Indapur and he found she was alone in the home. He desired to have sexual intercourse with her, and therefore, he closed the door. Ranjana was annoyed with him and started quarrelling. While accused was closing the door Ranjana poured kerosene on her person. He tried to tell her not to behave like this but she set herself on fire. He poured water from a pot on her person. She was wearing nylon saree. Fire was not extinguished completely, so he embraced her, and somehow, extinguished the fire, while he was extinguishing the fire, the pieces of Saree stuck to his person, due to which he sustained burn injuries on various parts of his body.

We have given our anxious consideration to the defence theory. Firstly it must be noted that the burn injuries found on the accused are very minor and as per the medical certificate Exh.54 those are on palm, elbow, axilla and thigh. The total extent of the burns is 16%. It is evident that Ranjana was wearing Nylon Saree and it must have caught fire immediately and thoroughly. Therefore, if at all, the accused did embrace her in order to extinguish the fire, in all the probabilities, accused would have suffered extensive burns like his wife. In any case, by embracing burning person, who has worn Nylon Saree would not be sufficient to extinguish the fire at all. Therefore, this defence theory appears to be farfetched, unrealistic and therefore, unreliable. In any case the prosecution evidence is overwhelmingly reliable and found to be sufficient to establish and inspire confidence and therefore, defence theory of the accused must fail and cannot be accepted as even a probable one, therefore, we are inclined to discard the defence theory as not reliable.

9. For the reasons recorded above, we hold that the prosecution has proved its case beyond reasonable doubt and the learned trial judge has rightly convicted and sentenced the accused for the said offences and thus judgment and order deserves to be confirmed.

In the result the appeal stands dismissed.