
(2012) 09 BOM CK 0109
In the Bombay High Court
Case No : Criminal Appeal No. 139 of 2012

Gopinath Pawar and Others	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 294
Penal Code, 1860 (IPC) — Section 302, 307, 34, 504

Citation : (2013) ALLMR(Cri) 233

Hon'ble Judges : U.D. Salvi, J;A.H. Joshi, J

Bench : Division Bench

Advocate : R.N. Dhorde, for Mr. V.R. Dhorde, for the Appellant; S.D. Kaldete, Assistant Public Prosecutor for State, for the Respondent

Judgement

U.D. Salvi, J.—The appellants assail their conviction for the offence punishable u/s 302 read with 34 of Indian Penal Code, 1860 and also consequent sentence to suffer rigorous imprisonment for life and to pay fine of Rs. 500/- in default to suffer further rigorous imprisonment for six months each imposed by learned Additional Sessions Judge, Beed in Sessions Case No. 112/2011 on 23rd February, 2012 in the present appeal. The appellants were husband, brother-in-law and mother-in-law of the deceased Mangal respectively.

2. According to the prosecution, the deceased Mangal succumbed to the 72% burn injuries sustained in the incident which occurred at her residence situated at Neknoor around 8.00 pm on 7/3/2011; and the appellants/ accused along with the absconding accused-Pooja had set her on fire.

3. Law was set in motion on registration of crime at Cr. No. 26/2011 u/s 307, 504 read with 34 of Indian Penal Code, 1860 with Neknoor Police Station around 18.40 hours on 8/3/2011 on the basis of dying declaration recorded by Naib-Tahasildar/ Executive Magistrate Shri Rameshwar Gore at District Hospital, Beed around 13.30 hours the same day. One more dying declaration was recorded by the police at the said hospital around 15.30 hours on 10/3/2011. The deceased

Mangal succumbed to the burn injuries on 13/3/2011.

4. During the course of investigation burnt pieces of clothes, kerosene stove, can containing kerosene were seized from the place of incident. Postmortem examination was conducted on the body of the deceased. The police recorded the statements of the witnesses. A dying declaration recorded by Police Constable on duty at District Hospital, Beed around 11.10 pm after the admission of the deceased to the said hospital on 7/3/2011 was collected in course of the investigation. Seized articles were sent to the Forensic Science laboratory for scientific investigation. On completion of the investigation, the charge sheet was duly lodged against the appellants/ accused in the Court of learned Judicial Magistrate, First Class, Beed. In course of time the case was committed to the Court of Sessions, where accused pleaded not guilty to the charges framed u/s 302 read with 34 and Section 504 read with 34 of Indian Penal Code, 1860.

5. The prosecution examined nine witnesses including mother of the deceased P.W.-1 Venubai, Medical Officers, Panchas, Executive Magistrate and the Investigating Officer.

6. Learned Trial Court believed the dying declarations recorded on 8/3/2011 (Exhibit 47) and 10/3/2011 (Exhibit 56) and brushed aside the dying declaration dated 7/3/2011 (Exhibit 24) on the ground that it was recorded under duress while the appellant/ accused No. 1 was present in the hospital.

7. Learned Advocate Shri R.N. Dhorde for the appellants questioned this approach of the learned Trial Court and submitted that all three dying declarations revealed material discrepancies in addition to a consistent revelation through out that the appellant/ accused No. 1 husband of the deceased Mangal had made efforts to save her and the deceased was removed to the hospital by the appellant/ accused. These facts, he argued, rendered the dying declarations untrustworthy and, therefore, could not have been employed to base conviction of the appellant/ accused for the crime alleged, particularly in absence of any corroborative evidence.

8. Learned Advocate Shri R.N. Dhorde for the appellants further pointed out that the dying declaration (Exhibit 24) recorded promptly on admission of the deceased to the hospital revealed a case of an accident and this dying declaration was the most undisputed piece of the evidence it being admitted in evidence pursuant to the notice given u/s 294 of Criminal Procedure Code, 1973.

9. In support of his submissions learned Advocate Shri Dhorde placed reliance on the following judgments :

- 1] Sharda Vs. State of Rajasthan, .
- 2] State of Punjab Vs. Chatinder Pal Singh and Others, .
- 3] Mehiboobsab Abbasabi Nadaf Vs. State of Karnataka, .
- 4] Smt. Kamla Vs. State of Punjab, .

5] Akhtar and Ors. V. State of Uttaranchal; AIR 2009 SC (supp.) 1676.

6] Shabbir Mohammad Vs. State of Rajasthan, .

7] Shaikh Farid Hussinsab V. The State of Maharashtra; 1983 CRI.L.J. 487.

These submissions call for close scrutiny of the dying declarations Exhibit Nos. 24, 47 & 56.

10. Dying declaration dated 7/3/2011 (Exh. 24) was admitted in evidence by the defense and constitutes undisputed piece of evidence in terms of rationale expressed in judgments delivered in Akhtar's case (supra), Shaikh Farid Husinsab's case (supra), and Shabbir Mohammad's case (supra). It discloses the following facts :-

1] That the deceased, her husband appellant/ accused No. 1, her six year old son Sandeep were staying together at Neknoor, and the in-laws of the deceased were staying separately from them.

2] that clothes of the deceased caught fire while the deceased was lighting stove and it was an accident for which nobody was responsible.

3] that the husband of the deceased on hearing her shouts rushed to the place of incidence and tried to douse the fire and had sustained injuries to his hands in the process.

4] that her husband/ the accused No. 1 removed her in AutoRickshaw, and she was firstly removed to Government Dispensary, Neknoor and thereafter to Government Hospital, at Beed and her in-laws had accompanied her husband to the hospital.

5] Endorsements made by the Medical Officer District Hospital, Beed both at the top and bottom of the dying declaration Exh. 24 to vouch that the patient was conscious at the time of giving statement,.

6] that it was recorded around 11.10 pm on 7/3/2011.

P.W.8 Dr. Upendra Kulkarni confirmed the fact of he having duly made the said endorsements at the top and bottom of the dying declaration Exhibit 24. He further testified that he was present when the statement of the patient was recorded. No where in his testimony there is anything to suggest that the patient - the deceased, Mangal was under duress of any one while giving her statement.

11. Evidence of P.W.1 Venubai mother of deceased Mangal reveals a pertinent fact that the deceased Mangal reveals a pertinent fact that the appellant/ accused No. 1 Gopinath, the deceased Mangal and their son Sandeep were residing together in a new house allotted to them in Government Scheme, and the said new house was at the distance of about 1 K.M. from old house of accused No. 1 Gopinath, and the accused No. 1 Gopinath had tried to douse the fire with quilt and brought her to hospital in a Rickshaw. She further disclosed that she had been to the hospital around 1.00 am in the night between the

fateful day of the incident and the next.

12. Evidence of P.W.-4 Uttam Tukaram Raut reveals a fact that the deceased Mangal was removed from Neknoor in an ambulance to Civil Hospital, Beed in company of the accused persons.

13. P.W.-5 Rameshwar Gore-Naib Tahasildar brought on record the dying declaration (Exh. 47). He revealed that he was not understanding Pardhi dialect/language, and was not in a position to say whether the patient Mangal cried and made utterances in Pardhi language though she was having pain and was not in a position to talk in normal mode. On the other hand, according to P.W. 1-Venubai, Mangal was making narration of the facts in response to the query made by her as to the happenings both in Pardhi language as well as in Marathi language. On this back drop, the dying declaration (Exh. 47) recorded by P.W.-5 Gore appears in question and answer form in chaste Marathi with sprinkling of Sanskrit words namely "Vaivahik", "Apatya". Pertinently, it discloses that the deceased, her son and her husband were staying together, and in the evening of 7/3/2011 brother-in-law, mother-in-law and husband of the deceased came to the residence. However, it indicts not only her husband, her brother-in-law, her mother-in-law but also sister-in-law Pooja as persons responsible for the incident. Strangely, it reveals that the deceased walked to Neknoor dispensary and her husband had removed her to Government Hospital, Beed.

14. P.W.-7 Dr. Ashwini Gite, who verified of recording of the statement (Exh. 47), reveals that there were some relatives with the patient who were sent out during writing of the statement (Exh.47).

15. P.W.-8 Dr. Upendra Kulkarni deposed that he had verified the condition of the Mangal on 10/3/2011 when her statement (Exh. 56) was recorded by P.S.I. at the District Hospital, Beed around 3.30 pm on 10/7/2011. Statement (Exh.56) makes a interesting reading. It is in narrative form and purports to add to the facts already disclosed by the deceased in her statement dated 7/3/2011 (Exh.24). It paints the acts of accused in gaudy colours. However, it confirms that she her husband and her son were staying separately at Neknoor and her in-laws were staying away from them. It purports to disclose a fact that in laws of the deceased Viz. mother-in-law-Sheshabai, her bother-in-law-Kashinath, and sister-in-law-Pooja arrived at the residence of the deceased at Neknoor while her husband was abusing her in most foul language in the evening of 7/3/2011 and, thereupon, her husband was emboldened and he caught hold of her neck, and her brother-in-law poured kerosene from the can on her and her mother-in-law and sister-in-law closed the door of the house and her brother-in-law-Kashinath set her on fire by igniting a match-stick, and thereafter, all of them ran outside; and when she cried for help her husband returned back and doused the fire by wrapping her in quilt. Statement Exh. 56 further explains that she had made false statement on 7/3/2011 holding none responsible for the incident at the instance of her husband who made promises to look-after her and her son to win her favour. Thus, statement Exhibit 56 in substance makes no addition to or

elaboration of the facts narrated in statement dated 7/3/2011 (Exhibit 24) but enters into conflict with it.

16. From reading of all these dying declarations, a fact cannot be denied that the deceased Mangal was of a fickle temperament capable of being tampered with by her close relations. If the deceased Mangal could give a false statement (Exh. 24) at the bidding of her husband, she could also be said to have given her later statements (Exhibit Nos. 47 & 56) at the instance of her close relations namely P.W.1 Venubai. There is nothing else to corroborate the facts asserted by her, in her statements (Exhibit Nos. 47 & 56). If the appellants/ accused were bent on finishing Mangal, they would not have accompanied her to the Government Hospital, Beed in a bid to save her. In fact, the appellant/ accused No. 1 tried to save the deceased with the available means like quilt at the cost of burning his hands. It is also inconceivable that the deceased could have walked a distance between her residence and Neknoor dispensary. Going by adage "Deeds speak louder than word"- the conduct of the appellant/ accused sounds to be more eloquent than the words recorded in Dying declaration (Exh. 47 & 56). Inconsistencies in the dying declarations and the facts peeping through the prosecution evidence as aforesaid do not warrant conviction of the appellants/ accused, particularly when the dying declarations (Exhibit Nos. 47 & 56) fail to inspire confidence.

ORDER

- (1) The appeal is, therefore, allowed.
- (2) The appellants/ accused are acquitted of the offence punishable u/s 302 read with 34 of Indian Penal Code, 1860.
- (3) The appellants/ accused Nos. 1 & 2 are ordered to be set at liberty unless required in any other case.
- (4) Bail bond of the appellant/ accused No. 3 stands cancelled.
- (5) Criminal Application No. 3429/2012 for fixing the appeal for final hearing, eventually, stands disposed off.