
(2004) 01 BOM CK 0052
In the Bombay High Court
Case No : Criminal Appeal No. 20 of 1999

Hanmant Dada Bhosale

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-01-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 498A

Citation : (2004) CriLJ 2942 : (2004) 2 DMC 99

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

Bench : Division Bench

Advocate : Shobha Gopal, for the Appellant; V.R. Bhosale, APP, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Kakade, J.—The appellant has preferred this appeal against the judgment and order dated 18th August, 1998 passed by Addl. Sessions Judge, Thane in Sessions Case No. 294 of 1989 holding him guilty for commission of offences punishable under Sections 498A and 302 of the Indian Penal Code and sentenced him to suffer two years and to pay fine of Rs. 200/= in default to suffer R.I. for two months for the offence punishable u/s 498A of I.P.C. and for life imprisonment and to pay fine of Rs. 200/= in default to suffer R.I. for two months. The substantive sentences were directed to run concurrently.

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

3. The appellant was married to deceased Ranjana in the year 1985 and since that time they were residing in hutment at NOUCIL Naka, Rabale, Tal. and Dist. Thane. Few days after the marriage the accused started ill-treating Ranjana by beating her and also harassed her demanding gold ring which was agreed to be given in their marriage. About 7/8 months prior to the incident which occurred on 18.11.1998, the appellant had brought Ranjana at her parental home and left her there for about a month. After about one month the appellant went to her

parental home with a document for divorce and expressed his desire that he wanted to divorce Ranjana and she should sign the document. The parents of Ranjana prevailed over him to arrange meeting of elderly persons from the community, which took place and in the course of the meeting the appellant agreed to take her back and guaranteed that she would not be harmed. Thereafter during Diwali of 1988 the accused along with Ranjana were invited to her parental home at which time he was presented new clothes along with gold ring. Thereafter accused and Ranjana returned to their residence. However, the accused again started ill-treating her by abusing and beating. On 18.11.1988 in the morning time Ranjana had gone outside for bringing soil and when she returned back at noon accused had returned to home and was angry when he found that Ranjana was not there. He then started beating Ranjana with stick and thereafter poured kerosene and set her on fire. As a result of which she suffered burn injuries. The neighbours gathered there and extinguished the fire. She was then admitted in the private hospital of one Dr. Sapatnekar by the neighbours. The medical officer of the said hospital had informed the police at Naupada Police Station. The Police visited the hospital but it appears that on 18th and 19th November, 1988 Police could not record the statement of Ranjana as she was not in a position to give the statement and therefore, on 20.11.1988 Dr. Sapatnekar contacted the police and police arrived at the hospital and were informed that Ranjana was in position to give her statement. Accordingly, police recorded her statement on 20.11.1988 in presence of Doctor on duty, who certified that the patient was in conscious condition to give statement. The statement was recorded at about 4.00 p.m. on that day wherein she squarely implicated the accused, who had poured kerosene on her person and set her on fire. The said statement was treated as FIR and offence was registered against the accused at C.R.No. I-524/1988 for offence u/s 307 of the Indian Penal Code at Rabale Police Station.

In the meantime on 20.11.1988 father of the accused informed the parents of Ranjana about the incident, due to which they along with brothers of Ranjana rushed to the hospital. Ranjana informed her brothers about the incident and stated that the accused set her on fire. Ranjana succumbed to her injuries on 22.11.1988 while under medical treatment at Civil Hospital at Thane where she was taken from earlier private hospital on 20.11.1988. The offence against the accused was converted u/s 302 and 498A of the Indian Penal Code. The statements of relatives of Ranjana recorded by the police. Inquest panchnama was held and body was sent for post mortem examination. Panchnama of scene of incident was prepared and incriminating articles which were seized by the police in the course of investigation were sent to Chemical Analyser for examination, whose report was received, which is part of record. On completion of the investigation the charge sheet was sent to the court of law. The Magistrate committed the case to the court of Sessions.

4. The learned Sessions Judge framed the charge against the accused for impugned offences to which he pleaded not guilty. The defence of the accused is

that of total denial of any criminal liability. The prosecution led its evidence at length, in which course the dying declarations recorded by the police were proved, which were corroborated by the two oral dying declarations of Ranjana. On the basis of available evidence the learned Trial Judge came to the conclusion that it was sufficient to bring home the guilt against the accused under both the charges and therefore, proceeded to convict and sentenced the accused in the aforesaid manner.

Hence the appeal.

5. We heard Ms. Shobha Gopal, the learned counsel for the appellant and Mrs. V.R. Bhosale, the learned APP for the State.

6. As it appears from the record, it is clear that the entire case is balanced on the dying declarations of Ranjana, recorded by the Police. It is apparent from the evidence, including that of medical officer and his post mortem report that Ranjana suffered unnatural death due to burn injuries. The evidence on record further eliminates the possibility of suicidal death and evidence is also sufficient to reflect the fact that Ranjana suffered homicidal death. It is the prosecution case that Ranjana was ill-treated constantly by the accused throughout their married life and accused used to demand gold ornaments from her parents who had allegedly agreed to in their marriage. However, even after receiving the gold ring, the accused did not stop harassing her and continued to assault and abused her throughout her life, as is reflected from the evidence of P.W.1 Mangal and P.W. 4 Balu, both sister and brother of Ranjana. Their testimonies show that whenever Ranjana used to visit parental home, she used to narrate how the accused beat her mercilessly after consuming liquor and also used to demand gold ornaments. They have further stated that accused wanted to divorce her for which purpose he executed the document, but in the course of the meeting of the elders of the community they succeeded in prevailing over him to take Ranjana back in his home. He had taken Ranjana to home but continued to assault and abuse her under the influence of alcohol. This evidence is not at all shaken in the course of the cross examination of both the witnesses and therefore, findings recorded by the learned Trial Judge holding the accused guilty for the offence punishable u/s 498A of the Indian Penal code has to be maintained.

7. The evidence on record further shows that on 18.11.1988 Ranjana was admitted in Dr. Sapatnekar's Hospital at Thane in burnt condition. On receipt of information P.W.3 P.S.I. Pawar visited the hospital along with Police Constable. P.S.I. further sated that on 18th and 19th November, 1988 he did visit Sapatnekar's Hospital with intention to record dying declaration of Ranjana but Doctor informed him that she was not in a condition to give statement and therefore? police had to return without recording any statement. On 20.11.1988 the police were given permission by the concerned Medical Officer to record her statement as she was conscious and found in a condition to give statement. Therefore, P.S.I. recorded her statement in presence of the Doctor. P.S.I. Pawar

has stated that he recorded dying declaration in Marathi as per the narration of Ranjana and then it was read over to her. She admitted the contents for which purpose he obtained her left hand thumb impression on the dying declaration. It was signed by P.S.I. Pawar proof of attestation. Thereafter he also secured the certificate of Doctor from the hospital and endorsement to that effect on Ex.15 dying declaration to the effect that patient had given her statement in a conscious condition. In the course of said statement Ranjana had stated that on 18.11.1988 at about 41.00 a.m. she had gone out to bring soil. The accused had returned to home at about 3.30 p.m. at which time she was not there and therefore on her return accused was angry and assaulted her with wooden stick. Thereafter quarrel ensued between them, in which course the accused poured kerosene upon her from stove and set her on fire, due to which she was burnt. The neighbours gathered and extinguished the fire and admitted her in the hospital. This statement was also treated as F.I.R. On which basis the offence came to be registered at Rabale Police Station at 9.45 p.m. on 20.11.1988.

In our considered view, the said dying declaration is found to be totally genuine and reliable when it is read in juxtaposition of the surrounding circumstantial evidence revealed from the record. Ms. Shobha Gopal, the learned counsel for the appellant raised objection in accepting this dying declaration to be genuine on mainly two ground. Firstly it was submitted it was delayed by two days because admittedly the incident took place on 18.11.1986, secondly she submitted that it was recorded by the Police, and therefore, its genuineness was in doubt. We prefer to disagree with this proposition. Firstly it may be noted that P.S.I. admitted in his cross examination that on 18.11.1988 they tried to record statement of Ranjana but doctor did not give their permission because she was found not in condition to give statement and therefore, on 20.11.1988 when she was in condition to give statement, it was recorded by him. In this regard it must be noted that if the police wanted to fabricate the false declaration they could have shown it to be recorded on 18.11.1988 itself. However, they did not do so and this aspect supports the factum of genuineness of the dying declaration. It is true that the Executive Magistrate was not summoned to record the same, however, in absence of any circumstances on record, to disbelieve the dying declaration recorded by the police, it cannot be said that the evidence of dying declaration is to be discarded only because police have recorded it.

In this regard we must note the ruling of the Apex Court in the case of State of Karnataka v. Shariff - AIR 2003 SCW 600. The Supreme Court had occasion to decide more or less similar issue in the case wherein dying declaration was recorded by the Police. In this regard it was observed that no doubt magistrate was not summoned in the hospital to record dying declaration and it was recorded by the police.

However, there is no requirement of law that the dying declaration must necessarily be made before Magistrate. Relying on the earlier rulings of that Court, it was observed that evidence of dying declaration cannot be discarded on

the ground that it was recorded by the police. In our considered view, what is necessary is that the court must be satisfied regarding the genuineness of the dying declaration and once it is found that the declaration was true and voluntary undoubtedly conviction can be based solely on the evidence of dying declaration without further corroboration. However, in the present case before us, we also find that the dying declaration is further corroborated by the oral dying declaration and therefore, we have no hesitation to hold that the evidence of dying declaration recorded by the police officer is true and genuine and therefore, has to be accepted to be sufficient to bring home the guilt.

8. The evidence of P.W.1 Mangal and P.W. 4 Balu further shows that father of the accused informed them about the incident on 20.11.1988 i.e. two days after the incident and thereafter they rushed to the hospital to meet Ranjana. They have also stated that Ranjana categorically stated them that it was the accused who had poured kerosene upon her and set her on fire. This corroborative evidence of oral dying declarations assumes importance because the record is clear enough to show that the written dying declaration recorded by the police on 20.11.1988 was first in time and the disclosure of the same fact to P.W.1 Mangal and P.W. 4 Balu, sister and brother respectively, by Ranjana is later in time and therefore, there was absolutely no question of element of tutoring by the sister and brother to Ranjana while she gave statement to the police. In our considered view, these oral dying declarations are corroborating to the written dying declaration recorded by the police for the purpose of convicting the accused for impugned crime.

9. For the reasons recorded above, we held that the reasoning adopted and findings recorded by the learned Trial Judge are found to be just, legal and proper and therefore, would brook no interference.

In the result the appeal stands dismissed.