
(2008) 08 BOM CK 0093
In the Bombay High Court
Case No : Criminal Appeal No. 150 of 2005

Lahu Ramchandra Bandpatte	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34, 498A

Citation : (2008) 08 BOM CK 0093

Hon'ble Judges : Ranjana Desai, J; D.Y. Chandrachud, J

Bench : Division Bench

Advocate : Abhaykumar Apte, for the Appellant; P.H. Kantharia, APP, for the Respondent

Final Decision : Dismissed

Judgement

D.Y. Chandrachud, J.—The Appellant, together with his brother and mother, was tried for offences punishable u/s 498A and Section 302 read with Section 34 of the Indian Penal Code. The Additional Sessions Judge at Solapur, by his judgment dated 17th December 2004 convicted the Appellant for offences under Sections 302 and 498A; in respect of the former, the Appellant has been sentenced to imprisonment for life and in respect of the latter, to suffer rigorous imprisonment for three years and to pay a fine of Rs. 1,000/and in default, to suffer rigorous imprisonment for six months. The other two accused have been acquitted.

2. The Appellant and the deceased, Sridevi, were married for 12 years. The case of the prosecution is that the deceased was being harassed and ill treated as a child had not been born from the wedlock. The Appellant and the deceased resided together in their matrimonial home at Solapur. The incident took place at 3 a.m. on 28th February 2004; the case of the prosecution being that there was an altercation during the course of which the deceased was told to leave the matrimonial home on account of her inability to bear a child. The deceased refused to do so upon which her clothes were doused with kerosene and she was

set alight by the Appellant. Sridevi was brought to the Casualty Section of the Civil Hospital at Solapur by the Appellant and his brother at 4.05 a.m. She was examined by P.W. 10, Dr. Ghorpade to whom she furnished her history and stated that the Appellant had poured Kerosene on her and set her on fire. Since the victim had suffered burns, she was shifted from the Casualty Section to the Burns Ward where she was examined by Dr. Gunjotikar, P.W. 9. Sridevi's dying declaration was recorded by ASI Gaigavli. Dr. Gunjotikar, P.W. 9, made an endorsement both before and after the statement that the patient was conscious and in a position to make the statement. ASI Gaigavli issued a letter to a Special Judicial Magistrate to record her dying declaration. The dying declaration of Sridevi was accordingly recorded by the Special Judicial Magistrate, P.W. 1 S.G. Mangoli at 6 a.m. In both the dying declarations, the victim implicated the Appellant, though in the second, a role was also ascribed to the mother-in-law and to the Appellant's brother. A spot panchanama was prepared in the presence of panchas and amongst the articles recovered from the site of the incident were a stove, a half burnt turkish towel, a half burnt gunny bag, burnt pieces of clothes and a match box. The Appellant was arrested on 24th February 2004. Sridevi died at the Civil Hospital on 29th February 2004. The brother of the Appellant and his mother were arrested on 28th February 2004 and 5th March 2004 respectively.

3. All the three accused, including the Appellant, were committed to trial for offences punishable u/s 498A and Section 302 read with Section 34 of the Indian Penal Code. The principal witnesses who deposed on behalf of the prosecution were, S.G. Mangoli (PW 1) who was the Special Judicial Magistrate, who recorded the dying declaration of Sridevi; U.D. Gaigavli (PW 4), who was the ASI at Fauzdar Chavdi Police Station; Dr. S.A. Gunjotikar (PW 9), who was the resident doctor on duty at the Surgical Ward at the Civil Hospital; the father of the deceased (PW 6), who turned hostile; and Dr. A.S. Ghorpade (PW 10), who was a Medical Officer on duty at the Civil Hospital at Solapur. The prosecution examined ten witnesses. The defence was that Sridevi had committed suicide. The Additional Sessions Judge at Solapur convicted the Appellant of offences under Sections 302 and 498A of the Penal Code. The Appellant's mother and brother have been acquitted.

4. On behalf of the Appellant, the following submissions have been urged in order to assail the correctness of the judgment and order of conviction:

(i) No thumb impression or signature of the victim was obtained on the medical papers when she furnished her history to Dr. Ghorpade (PW 10); (ii) There is a discrepancy in timings; PW 9 who was the Medical Officer, deposed that the victim was brought in at the Burns Ward at 6.15 a.m. There is no endorsement in the medico legal case papers that he had examined the victim at 5.30 a.m. and therefore, his presence was doubtful; (iii) The recording of the dying declaration by the Special Judicial Magistrate, P.W. 1, is stated to have commenced at 6 a.m. and to have been completed at 6.05 a.m. The Medical Officer, however, stated

that the victim was brought in the Burns Ward at 6.15 a.m. Hence prior to that there was no occasion for the dying declaration to be recorded; (v) Two dying declarations of the victim were recorded, the first at 5.30 a.m. and the second at 6 a.m. The second dying declaration contained an improvement since the first dying declaration had not implicated the brother and the mother of the Appellant. The evidentiary value of the dying declaration is cast in doubt as a result of the improvement made in the second of the two dying declarations; (vi) The father of the deceased has not supported the prosecution.

5. On the other hand, the Learned APP submitted that in the present case, both the dying declarations implicated the Appellant, who was the husband of the deceased. In the second dying declaration the victim had also implicated the other two accused, who were as a result, acquitted by the Learned Additional Sessions Judge.

That however, is no ground to disbelieve the dying declarations in so far as they consistently implicate the Appellant. Both the dying declarations bear an endorsement of the Medical Officer who found that the victim was conscious and in a fit condition to make a statement. That apart, it was submitted that the victim had also furnished her history to P.W. 10, Dr. Ghorpade, who recorded it in the OPD papers. Reliance was also placed on the spot panchanama and on the report of the Chemical Analyser according to which a residue of kerosene was found on the articles recovered. It was urged that there was no reason to impute any motive either to the Medical Officer or to the Special Judicial Magistrate, the latter having recorded one of the dying declarations.

6. The incident in question occurred on 28th February 2004. The victim Sridevi, who was the spouse of the Appellant was brought to the Civil Hospital at Solapur at 4 a.m. with burn injuries by the Appellant and his brother. P.W. 10, Dr. Ghorpade, examined the victim Sridevi furnished her history to the examining doctor. P.W. 10 recorded in the OPD papers that he had been informed by the patient that her husband (the Appellant before the Court) had poured kerosene on her and had set her on fire. During the course of his deposition, P.W. 10 stated that the victim was brought to the Hospital at 4.05 a.m. with burns and while giving the history, she stated that her husband had poured kerosene on her body and set her on fire. The OPD papers were marked in evidence as Exh.45. On behalf of the Appellant, doubt was sought to be cast on the authenticity of Exh.45 on the ground that the OPD papers were not signed by the victim, nor did they bear her thumb impression. This submission cannot carry any weight. OPD papers at the Civil Hospital which contain a record of the medical history, examination and treatment administered to a patient, are not required to be signed by the patient. But quite apart from Exh.45, the case of the prosecution is based on the two dying declarations, namely, (i) Exh.22 which was the dying declaration recorded by ASI Gaigavli (PW 4) at 5.30 a.m.; and (ii) Exh.12 which was the dying declaration recorded by the Special Judicial Magistrate (PW 1) at 6 a.m.

7. The first dying declaration which was recorded by P.W. 4 at 5.30 a.m. contains an endorsement by Dr. Gunjotikar (PW 9) to the effect that the patient was conscious and in a position to give a statement. Dr. Gunjotikar deposed that he was present throughout when the statement was being recorded. In the course of the first dying declaration, Sridevi stated that she was being ill treated by the Appellant and by her mother-in-law and brother-in-law since she had not been able to bear a child. She then stated that the Appellant was calling upon her to go back to her parental home which she had declined to do. The Appellant is stated to have picked up a quarrel with the victim and once again asked her to go back to her parental home. The victim stated that she had declined to leave her matrimonial home. Thereupon, according to her, her mother-in-law and brother-in-law had called her a barren woman and abused her.

The Appellant is stated to have poured kerosene over her body and to have set her on fire. As a result, she stated that she had sustained burn injuries on her head, chest, hands, legs and stomach. The incident took place, according to the victim, at or about 3 a.m. The second dying declaration was recorded by PW 1, S.G. Mangoli, Special Judicial Magistrate at 6 a.m. and contains an endorsement of the doctor, P.W. 9, to the effect that the victim was conscious and in a position to furnish a statement. The second dying declaration implicated, in addition to the Appellant, the mother and the brother of the Appellant as being involved in the act of dousing kerosene on the victim and setting her on fire. The first dying declaration, as noted earlier, stated that it was the Appellant who had poured kerosene and set fire to her. That was the circumstance which weighed with the Learned Additional Sessions Judge in acquitting the brother and the mother of the Appellant.

8. On behalf of the Appellant, it has been urged before the Court that the improvement which was made in the course of the subsequent declaration would cast a serious doubt on the evidentiary value of the two dying declarations, in so far as they implicate the Appellant. We do not find any valid reason to accept the submission. Both the dying declarations, it may be noted, are consistent in so far as the role that has been played by the Appellant is concerned. In both the dying declarations the victim has consistently maintained that there was a quarrel during the course of which, it was the Appellant, who had set fire to her after dousing her with kerosene.

9. The law attributes a degree of sanctity to a dying declaration. The basis of the principle is that in the ordinary course of human events, it is unlikely that a dying person would make an untrue statement when confronted with the imminence of death. At the same time, the law is cognisant of the fact that the maker of the statement, when the statement is contained in the form of a dying declaration, is unavailable to face the rigours of cross-examination.

A dying declaration is, therefore, assessed as an independent piece of evidence and can be acted upon, even without corroboration, if it is found to be trustworthy and reliable. The principles which must govern the underlying

approach of the Court in such a case are well settled. The law does not mandate that there should be a plurality of dying declarations. Where there is more than one dying declaration, the first in point of time is ordinarily to be preferred (reference may be made in this connection to the judgments of the Supreme Court in *Balbir Singh v. State of Punjab* AIR 2006 SCW 4950 and *Bapu v. State of Maharashtra* AIR 2006 SCW 5911).

10. During the course of her two dying declarations, the victim stated that she had been ill treated by the Appellant on account of her inability to bear a child. Both the dying declarations are consistent in the elaboration which they contain of the role of the Appellant in causing the death of the victim. The dying declarations can safely be acted upon as a trustworthy and reliable piece of evidence. Both the dying declarations contain an endorsement of the Medical Officer (PW 9) to the effect that the victim was conscious and was in a fit condition of mind to make a statement. There was no reason for either of the two doctors or for the Special Judicial Magistrate to depose falsely. Absolutely no reason has been suggested to impute any motive to PW 1, PW 9 or PW 10.

11. The panchanama of 28th February 2004 (Exh.29) records the recovery of an iron Stove with a residue of kerosene, a partially burnt turkish towel, pieces of burnt clothes and a match box. The report of the Chemical Analyser of 30th July 2004 (Exh.30) found a residue of kerosene on the iron Stove, the turkish towel, on the burnt pieces of clothes and on a full shirt, chadder, sari and blouse.

12. A submission was sought to be built upon by relying upon the difference in timings at which the dying declarations were alleged to have been recorded and it was urged that PW 9 had deposed that the victim was brought in at 6.15 a.m. at the Burns Ward. Hence, it was sought to be submitted that prior to this, there was no occasion to record the dying declaration. It was also urged that there was no endorsement in the medico legal case papers that the victim was examined at 5.30 a.m. The submission, however, cannot be accepted. The victim was initially brought to the Casualty Section of the Civil Hospital. PW 9, the doctor who was on duty in the Surgical Ward, stated that the victim was brought to the Casualty Department at 4.05 a.m. PW 10, who was on duty in the Casualty Department of the Civil Hospital also stated that the victim was brought in at 4.05 a.m. when she furnished the case history. The first dying declaration was recorded at 5.30 a.m by P.W. 4 while the second was recorded at 6 a.m. by P.W. 1. There is absolutely no justifiable reason to discard the authenticity of the dying declarations. In any event the alleged discrepancies of timing to which a reference has been made in the course of submissions are of a minor nature and do not detract from the trustworthiness or reliability of the two dying declarations.

13. Before concluding, it would be necessary to record that the father of the deceased, Bhimsha Irkal (PW 6), turned hostile. However, during the course of his crossexamination, he stated that the Appellant was addicted to liquor and that he used to ill treat the victim by beating her under the influence of alcohol.

The prosecution, it must, however, be emphasized, has proved its case beyond reasonable doubt quite independent of the evidence of PW 6.

14. For all these reasons, we are of the view that there is no merit in the submissions which have been urged on behalf of the Appellant. The appeal shall accordingly stand dismissed.