
(2014) 08 BOM CK 0215

In the Bombay High Court

Case No : Criminal Appeal Nos. 204 and 362 of 1993

Mahadeo Pralhad Salave

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 306, 504

Citation : (2015) ALLMR(Cri) 1321

Hon'ble Judges : P.V. Hardas, J; Anuja Prabhudesai, J.

Bench : Division Bench

Advocate : S.M. Sabrad, Advocate, for the Appellant; U.V. Kejriwal, APP, for the Respondent

Judgement

P.V. Hardas, J.?The Appellant who stands convicted for an offence punishable under Section 306 of the Indian Penal Code and sentenced to R.I. for 7 years and to pay a fine of Rs. 1,000/- in default of which to undergo further R.I. for one year and fine of Rs. 500/-in default of which to undergo R.I. for six months for offence punishable under Section 504 of the Indian Penal Code, by the 3rd Additional Sessions Judge, Solapur, by Judgment dated 22.4.1993 in Sessions Case No. 147 of 1991 by this Appeal questions the correctness of his conviction and sentence. The State being aggrieved by the acquittal of the Appellant/ Accused for offence punishable under Section 302 of the Indian Penal Code has filed Criminal Appeal No. 362 of 1993, questioning the acquittal of the accused. Since both these Appeals arise from the same Judgment of the Trial Court, these Appeals are being decided by this common Judgment.

2. Facts as are necessary for the decision of these Appeals may briefly be stated thus.

PW-11 Pandurang Raut, Head Constable, who was attached to Vijapur Outpost and was on duty in the Outpost of the MIDC area received information at about 5.15 about the admission of injured Rukmini in the Civil Hospital at Solapur. He was entrusted with carrying out the necessary inquiry. He was also informed that

Rukmini and her husband/Appellant had been admitted in the Hospital. He, therefore, immediately proceeded to the Civil Hospital at Solapur and had noticed the Appellant and injured Rukmini. He had also noticed that Rukmini had sustained 100% burns and therefore, he approached the Executive Magistrate i.e. PW-4 Bhagirathi for recording the dying declaration of injured Rukmini. The honorary Magistrate PW-4 Bhagirathi accordingly followed PW-11 Head Constable Raut to the Civil Hospital and requested the Medical Officer to ascertain if injured Rukmini was in a fit condition to give her statement. Accordingly, the Magistrate recorded the statement of injured Rukmini at Exhibit 17 and handed over the dying declaration to PW-11 Head Constable Raut. On the basis of the dying declaration at Exhibit 17, PW-11 Head Constable Raut lodged his report at Exhibit 35. He submitted the dying declaration, his FIR alongwith the report at Exhibit 36.

PW-12 Head Constable Dynandeo Bansode, who was also attached to the Vijapur Outpost, received the dying declaration and the report of Head Constable Raut and accordingly, registered an offence vide Crime No. 92 of 1990. The investigation of the said crime was then entrusted to PW-15 Police Inspector Babasaheb Patil.

PW-15 P.1 Patil, who was attached to the Vijapur Police Station was entrusted with the investigation of the said crime. He accordingly visited the scene of the incident and in the presence of the panchas drew the scene of the incident panchnama at Exhibit 40. From the scene of the incident he seized certain articles like half burnt polyester saree, one mirror, burnt pieces of petticoat and other articles. The injured Rukmini meanwhile had succumbed to her injuries and accordingly, an inquest panchnama was drawn. The dead body was referred for postmortem examination. Upon completion of further investigation by Dy. S.P. Mr. Pawar, a charge-sheet was filed against the Appellant.

3. We have heard Mr. Sabrad, learned Counsel for the Appellant and the learned APR. The learned Counsel for the Appellant has urged before us that the dying declaration ought not to have been relied upon by the High Court in the light of the fact that the dying declaration at Exhibit 17 does not bear the endorsement of the Executive Magistrate that the dying declaration had been read over to injured Rukmini. The learned Counsel for the Appellant has further urged before us that in the light of the Judgment of the Supreme Court in Shaikh Bakshu and Others Vs. State of Maharashtra--> as well as the Judgment of the Division Bench of this Court in Abdul Riyaz Abdul Bashir Vs. State of Maharashtra, . The dying declaration ought to have been disbelieved. The learned Counsel for the Appellant has further urged before us that the Trial Court could not have created an entirely new case for sustaining the conviction of the Appellant for an offence punishable under Section 306 of the Indian Penal Code. The learned APP has urged for dismissal of the Appeal filed by the Appellant and for allowing the State Appeal and convicting the Appellant for the offence punishable under Section 302 of the Indian Penal Code.

4. As pointed out by us above, the dying declaration at Exhibit 17 was recorded by PW-4 Bhagirathi as Honorary Magistrate. In his examination-in-chief, PW-4 Bhagirathi has no doubt stated that the dying declaration was read over to injured Rukmini and thereafter, her thumb impression was obtained. However, perusal of the dying declaration at Exhibit 17 reveals that there is no endorsement in the dying declaration at Exhibit 17 that the dying declaration was read over to Rukmini and Rukmini had admitted the contents to have been correctly recorded. In the absence of this evidence, according to us, the Trial Court was in error in placing reliance on the said dying declaration.

5. Prosecution has examined in all 18 witnesses. PW-2 Mumtaz, PW-3 Mohan and PW-6 Nagarbai, neighbours of the Appellant do not depose about any oral dying declaration being made by Rukmini. These witnesses depose about the presence of the Appellant at the scene of the incident when Rukmini had sustained burns. Prosecution has examined PW-5 Subhadrabai, mother of Rukmini, PW-7 Kasrura, sister of Rukmini and PW-16 Laxman, a neighbour, who depose about the oral dying declaration being made to them by Rukmini. All these three witnesses in terms state that Rukmini had informed them that the Appellant was suspecting her character and had abused her as she had gone to the residence of her brother Balu. In a fit of rage Rukmini had poured kerosene and she was set blaze by the Appellant. Thus, according to the oral dying declaration, Rukmini had been set ablaze by the Appellant. In the dying declaration at Exhibit 17, Rukmini has completely suppressed about she pouring kerosene on herself though she states that she was set ablaze by the Appellant.

6. In the face of this evidence, the Trial Court ought not to have convicted the Appellant for an offence punishable under Section 306 of the Indian Penal Code. There was no unimpeachable evidence that the Appellant had in any manner abetted the commission of the offence. It was impermissible to the Trial Court to carve out a completely new case on the basis of the testimony of the witness for convicting the Appellant for offence punishable under Section 306 of the Indian Penal Code. The Appeal in that behalf therefore, according to us, deserves to be allowed.

7. In so far as the State Appeal is concerned, as pointed out by us above, no reliance can be placed on the dying declaration at Exhibit 17. The oral dying declaration alleged to have been made by Rukmini to the prosecution witnesses is to the effect that she had herself poured kerosene and she was set ablaze by the Appellant. Undoubtedly, the Appellant had also sustained injuries in his attempt at extinguishing the flames. This is also admitted by Rukmini in her dying declaration at Exhibit 17. Since Rukmini was angry and in a fit of rage she had poured kerosene on herself, we find it difficult to believe that the Appellant would set her ablaze. In an attempt at committing suicide Rukmini had poured kerosene on herself with the intention of committing suicide. The possibility that Rukmini could have committed suicide also cannot be ruled out. The question is whether there is unimpeachable evidence about the Appellant abetting the

commission of the suicide. As pointed out by us, there is no unimpeachable evidence which would suggest that Rukmini had committed suicide. We are only exploring the possibility that Rukmini could have committed suicide. There is no unimpeachable evidence regarding the abatement of the commission of suicide by the Appellant. Thus, even an offence punishable under Section 306 of the Indian Penal Code is not made out. An offence punishable under Section 302 of the Indian Penal Code on the basis of the oral dying declaration also cannot be made out as there exists a strong possibility of Rukmini having committed suicide. Thus, in our opinion therefore, the Appeal filed by the Appellant deserves to be allowed and the Appeal filed by the State deserves to be dismissed. Accordingly, Criminal Appeal No. 204 of 1993 is allowed and the conviction and sentence of the Appellant is hereby quashed and set aside and the Appellant is acquitted of the offence with which he was charged and convicted. Fine if paid by the Appellant be refunded to him. His bail bonds stand cancelled.