
(2004) 01 BOM CK 0032
In the Bombay High Court
Case No : Criminal Appeal No. 144 of 2000

Nandu Janu Patil	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 29-01-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2004) 01 BOM CK 0032

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

Bench : Division Bench

Advocate : S.D. Shukla and A.P. Adhikari, for the Appellant; U.V. Kejariwal, APP, for the Respondent

Final Decision : Dismissed

Judgement

V. G. Palshikar J.

1. Being aggrieved by the judgment and order of conviction passed on 30-12-1999 by the Additional Sessions Judge, Palghar, in Sessions case No. 846/96 convicting the accused u/s 302 of IPC and sentencing him to suffer imprisonment for life, the appellant has filed this appeal on the ground mentioned in the memo of appeal as also verbally canvassed by the learned counsel appearing on behalf of the accused/appellant.

2. With the assistance of the learned counsel for the defence and the learned Prosecutor we have scrutinised the evidence and have reappreciated the evidence on record. The prosecution story as revealed from the reappreciation of the evidence stated briefly is that the accused was married to the deceased and they were residing together. On 12-11-1995 the accused came home drunk and found P.w.3 Rajesh in his house. This Rajesh was the son of Geeta, the deceased from her first husband. The accused was therefore annoyed and scolded the deceased who told that on taking food Rajesh will go back. Thereafter around 10 O' clock in the night the accused again quarrelled with the deceased and poured

kerosene on her body and set her on fire. On the shouts of the victim the neighbours gathered and extinguished the fire and put her into hospital where her dying declaration was recorded. The accused was immediately arrested and the matter was investigated. After the investigation the accused was prosecuted for murdering his wife by burning her to death.

3. The prosecution has examined as many as 10 witnesses to prove its case. It was on appreciation of this oral evidence along with other documentary evidence that the learned trial Judge came to the conclusion of guilt and convicted and sentenced him to imprisonment for life as aforesaid. It is in the light of this evidence, we have to appreciate the contentions raised by the rival parties.

4. P.w.1 Nanibai is the sister of deceased, who went on the scene of offence immediately to see her sister burning and amongst those who tries to extinguish the fire. This witness was told by the victim that she was put on fire by the accused. This witness took the victim to the Government hospital, where statement of the victim was recorded. The cross examination of this witness is inconsequential. There is no reason why this witness should disbelieve.

5. P.w.2 is Vasant who is the landlord of the building or chawl in which both the victim and P.w.1 was staying. He heard of the quarrel which took place between the accused and the deceased around 3 p.m. and he then says that he then left to Mumbai. This witness then corroborates the statement made by P.w.1 that there was a quarrel between the accused and the deceased around 8.36 p.m. on that day.

6. P.w.3 is Rajesh, the son of the victim from her first husband. He also corroborates the fact of quarrel between the accused and the deceased because of the witness being called for food by the victim. He speaks that some woman told him that his mother that is the victim was on fire.

7. P.w.s.4 Vasant and P.w.5 Gulab are the panch witnesses. Both of them have turned hostile, and according to them the panchanamas are not made before them as alleged by the prosecution. However the investigating officer has been examined on this behalf and he has proved the panchanama.

8. P.w.6 Ganesh is the police constable who recorded the dying declaration of the victim in presence of the doctor. He positively states that he enquired the condition of the patient from the doctor and on the doctor saying that the patient was in a position to give statement, recorded the dying declaration. He has proved the dying declaration which is at Exh.19.

9. P.w.7 is Dr. Dinkar who was present when the statement was recorded and has stated in his deposition that the patient was conscious and in a condition to give statement. Both of them thus say that the victim was alive and was in a position to give statement in relation to the cause of her death. It was accordingly recorded and proved as Exh.19. There can be no doubt therefore regarding the condition of the patient while giving the statement that she was so conscious and

oriented which is obvious from the evidence of P.ws. 6 and 7 which corroborates each other and is cohesive. Exh.19 is the dying declaration made by the victim. In this statement, the victim has very clearly stated the circumstances in which she was set on fire by her husband. She has stated that there was quarrel between the accused and the victim over asking Rajesh to come for food at their residence. The contention of the husband/accused was why should her son from the first husband take food in his house. He was then told by the victim that Rajesh will go away after taking food. Then she stated that around 10 in the night the accused again abused her and put kerosene on her body and struck a match box. Hence the statement of the complainant. The statement is duly signed by the police constable who recorded it which bears certificate of the doctor that the patient was conscious while recording the statement. All the necessary requirements of dying declaration are therefore proved.

10. P.ws. 8 Gopiben and P.w.9 Urmila are the neighbouring witnesses who were witnessed the earlier quarrel over Rajesh having food at the house of the accused. Their evidence is consequentially immaterial. P.w.10 is the investigating officer who has proved the panchanama. It is thus a case where conviction is recorded by the learned trial Judge accepting the saying declaration as true and correctly recorded, finding corroboration with the deposition of P.w.6 the police constable who wrote it and P.w.7 the doctor who was present during the recording of the statement. There is also endorsement of the doctor regarding the condition of the patient at the time when it was recorded. P.w.1, 2, 3, 8 and 9 all state that there was quarrel between the accused and the deceased around 8 p.m. They corroborate each other on all material points. There is therefore no reason to disbelieve any of them when they say there was quarrel between the accused and the deceased around 8 p.m. on that day. The dying declaration also records this as a statement of the victim. So there is independent corroborative evidence to the statement. In her dying declaration she says that Rajesh came to her house for food was the cause of quarrel between the accused and her, as a result of which the accused got enraged and poured kerosene on her and put her on fire. In our opinion this evidence is enough to conclusively prove that the accused committed murder of his wife by putting her on fire. There is no error of law committed by the learned trial Judge when concurrent findings are given by the learned Judge as aforesaid. We therefore confirm the finding as recorded by the trial Judge and therefore held that there is no substance in this appeal. In the result therefore the appeal fails and is dismissed.