

(2004) 09 BOM CK 0083

In the Bombay High Court

Case No : Criminal Appeal No. 166 of 2000

Pushpabai Subhash Garudkar, Pramod Subhash Garudkar,
Damodar Subhash Garudkar and Sou. Swati " Nirmala
Pramoad Garudkar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 06-09-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 324, 34, 452, 498A

Citation : (2004) 09 BOM CK 0083

Hon'ble Judges : V.G. Palshikar, J;Anoop V. Mohta, J

Bench : Division Bench

Advocate : Nitin Jamdar, for the Appellant; Usha Kejariwal, APP, for the Respondent

Final Decision : Allowed

Judgement

V.G. Palshikar J.

1. By this appeal the appellants, four in number, have challenged the order of conviction passed by the 10th Additional Sessions Judge, Pune in Sessions Case No. 487 of 1998 under Sections 302, 498-A INDIAN PENAL CODE (45 of 1860), 452, 324, 504 read with 34 of IPC on 23-2-2000.

2. With the assistance of the learned counsel for the accused and the learned Prosecutor, we have scrutinized the records of the case and re-appreciated the evidence on record. The prosecution has examined as many as 13 witnesses in support of its case.

3. The prosecution, story as emerges from the testimony of these witnesses stated briefly is that the appellants are in-laws of the victim Manisha who was married to one Mangesh. The in-laws was ill-treating the deceased Manisha and there used to be frequent quarrels in this relation. On 5-10-1998 such quarrel took place and the accused were quarrelling with the husband of the victim and

were assaulting him. At that time the deceased was inside the house. When the deceased saw that her husband being beaten, she came near the window and tried to intervene. The prosecution case is that thereafter she was put on fire by the present appellants, the original accused, as a result of which she ultimately died in the hospital. The learned trial Judge on appreciation of this evidence came to a conclusion of guilt and convicted the four accused as aforesaid. It is this order of the learned trial Judge which is impugned in this appeal.

4. The learned counsel appearing on behalf of the accused/appellants submitted that the entire case stood in circumstantial evidence including various dying declarations made by the deceased before she actually died on 10-10-1998. The variance between these dying declarations was so apparent and obvious that it was inherently improper to believe anything said in any of these declarations. He therefore prayed for setting aside the impugned order and acquit all the accused persons.

5. This appeal was however opposed by the Addl.P.P. who tried to reconcile the various statements made in various dying declarations and pointed out the evidence as marshalled by the trial court was adequate to convict the accused and is therefore adequate to maintain the conviction as ordered by the trial Judge. It is this rival contentions which we have to consider in the light of the re-appreciation of evidence on record.

6. First we will consider the dying declaration of the victim, deceased Manisha as recorded by the Special Executive Magistrate, which was duly proved, which is at Exh.21. In this dying declaration recorded by the Special Executive Magistrate on 5-10-1998, the victim has stated that in the morning on the faithful day when her husband was brushing his teeth in front yard and her mother-in-law Pushpa, sister-in-law Swati had held her husband Mangesh and Pramod and Damodhar, brothers of her husband assaulted him with iron bars. She therefore came out of the house after hearing the shouts of her husband. She was then caught by her mother-in-law and sister-in-law and her brother-in-law Pramod poured kerosene on her body and put her on fire. She then says that she was saved by her husband who poured water on her person and her in-laws thereafter ran away. She has therefore stated about the complaint of ill-treatment and burning by her in-laws. She states that her in-laws means her mother-in-law, two brother-in-laws and one sister-in-law i.e. wife of Pramod. This document carries an endorsement by doctor who was present at the time when it was recorded. It is proved by the Magistrate who recorded it and this Exh.21 is the first dying declaration, which tells us that the victim was put on fire by her in-laws after she came out of the house, hearing the shouts of her husband. She claims her mother-in-law and sister-in-law as the persons who caught hold of her and Pramod the brother-in-law as the person who put her on fire. No role whatsoever is attributed by her in this statement to her second brother-in-law i.e. Damodhar.

7. We have then the deposition of P.w.7 Dr. Satyan who examined the patient on her admission to the hospital and he states what was disclosed by the patient as

the case history on her admission at 8.30 a.m. on 5-10-1998. There she told the doctor that her mother-in-law and her husband's brother Pramod poured kerosene on her person and set her on fire. She then stated that they also assaulted her over head. Now we have no reason to disbelieve the doctor when he states that it was disclosed by the victim to him on her admission and therefore becomes first disclosure by her regarding how she sustained the burn injury. He then deposed in para 2 that the burns were superficial to deep. He then mentions about recording of the dying declaration around 1.00 p.m. by the Special Executive Magistrate. Then he proves Exh.31 which is the statement of the victim recorded by the police at 11.30 a.m. It carries the endorsement of the doctor. In this statement recorded around 11.30 a.m. on 5-10-1998 the narration is exhaustive. There she names everybody. Mother-in-law Pushpa, brothers-in-law Pramod and Damodhar and sister-in-law Nirmala, wife of Pramod. She then proceeds to describe the marriage and the torture thereafter. She states that the torture was not only to her but also to her husband as they wanted to leave her by her husband. There was also demand of Rs. 5000/- as dowry. Then she describes the incident with graphic details, where she says that around 8.00 a.m. her husband was being beaten by her two brother-in-laws, mother-in-law and sister-in-law and he was shouting when she came out of the house. After opening the door her mother-in-law and sister-in-law entered the house, sister-in-law fell her to the ground by holding her by hair, mother-in-law then lifted a can of kerosene, sister-in-law took away cork, mother-in-law then poured kerosene on her body. Sister-in-law and Damodhar held her and Sasoo ordered Pramod to light her. Then Pramod lighted a match stick and threw it on her body. On her shouting her husband came, saw her burning and poured water and took her to the hospital. Then she re-iterated the allegations after naming the accused persons and repeats how she was put on fire. It is the statement about how she put on fire. It is signed by police inspector and it is proved by the doctor as also the police officer who wrote it.

8. It will be seen that this Exh.31 is an elaborate document where the patient victim has given a concise and detailed statement as to how there was torture, how there was demand for dowry, how she and her husband were tortured, how she was beaten up, and how she was burnt by her in-laws. Here she attributes specifically the overact to each of the accused persons. In the dying declaration Exh.21 she stated that she came out of the house and there she was put on fire by her sister-in-law, mother-in-law and brother-in-law Pramod. In Exh.36 she gives definite roles of each of them. Whereas when she disclosed her case history to the doctor, she stated that her brother-in-law i.e. husband's brother poured kerosene and set her on fire. In this disclosure to the doctor which is the first in point of time there was no mention of her sister-in-law and other brother-in-law. In the second dying declaration made around 11.30 a.m. to the police, there is elaborate description of the entire incident with specific role attributed to each of the accused persons. it appears that her memory improved a lot between 8.30 and 11.30 a.m. She stated before police, how they entered their house,

how they fell her and put her on fire. But in the dying declaration recorded two hours thereafter by the Executive Magistrate, she says nothing on this. She does not tell the Executive Magistrate that the can was lifted by the mother-in-law and it was opened by the sister-in-law then the kerosene was poured by mother-in-law and she was held by sister-in-law and Pramod and she was put on fire by Pramod. All that she says is she was held by sister-in-law and mother-in-law and put on fire by Pramod. So in the dying declaration Recorded at 11.30 a.m. (Exh.31) she was fell to the ground and put on fire and she was held by sister-in-law and Damodhar held her. But in the declaration of 11.30 by the Executive Magistrate, Exh.21, it is the mother-in-law and sister-in-law who caught hold of her and Pramod put her on fire with no mention of Damodhar. None of this is mentioned in the first report to the doctor P.w.7. Then we have statement made by the victim to her husband P.w.3 and father P.w.4. P.w.3 Mangesh explained how the marriage was settled and how it was performed and what was the dowry. He then describes how the torture of himself and his wife Manisha started. Then in para 4 of his deposition, he stated what happened on 5th October in the morning. He then says that when he was out brushing teeth, he heard accused No. 4 abusing his wife Manisha, calling her filthy names. He therefore asked her not to do so. At that time his brother Pramod came out and told him that not to interfere with ladies. Thereafter there was exchange of words between them. He then says that his younger brother Damodhar came there and said that if I speak anything wrong of my elder brother, he will beat me up. He then gives graphic description of how he was beaten up and says that he saw his brothers running away and at that time he heard scream of his wife. When he went inside the room he saw Manisha in the flames. He tried to extinguish her fire and ultimately took her to the hospital. Then he says that at time Manisha was shouting saying to everyone that due to my mother she was on fire. He then states how he took her to the hospital where she was admitted and where she died. He then deposed as to what he was told by Manisha, which is as follows:

I made enquiries with Manisha as to how she was burnt, she told me that Pramod poured kerosene on her, my mother assaulted her, her co-sister i.e. accused No. 4 in the case threw lighted match stick on her. Hence she sustained the burns."

So, according to Mangesh, his wife received burn injuries when kerosene was poured on her person by Pramod, she was assaulted by her mother-in-law and the lighted match stick was thrown on her by sister-in-law accused No. 4. This therefore is the third statement of the victim where she told her husband that kerosene was poured by Pramod. In Exh.21 she speaks of Pramod pouring kerosene on her and also throwing the lighted match stick. There is no mention of Manisha being held by mother-in-law and sister-in-law before she was put on fire. Here also in her narration to her husband, there is no mention of Damodhar doing anything.

9. A perusal of these three statements would therefore show the material contradictions in her disclosure at different times as to who burnt her and how. In one place it is the mother-in-law- who was put her on fire and in the 2nd place it was sister-in-law who has done it and in third place it was brother-in-law Pramod who has done it. In two statements there is no mention about Damodhar whom she implicates in the statement before police. The story as disclosed in Exh.31 is again different. There she says that the kerosene can was lifted by mother-in-law and it was uncorked by sister-in-law and kerosene was poured by mother-in-law, she was then held by sister-in-law and Damodhar and then Pramod put fire on her person. A careful consideration of all these declarations bring out vehemently an attempt on the part of the victim to rope in as many of her relations as she could. First it is only mother-in-law and Pramod then it is mother-in-law, Pramod and accused No. 4 and then it is Pramod, Damodhar, mother-in-law and sister-in-law. The improvements are deliberate and are liable to be noted timewise. The first statement is by the victim to her husband immediately after she was taken to then hospital, there she states the names of only two persons. Then there is disclosure of the case history to the doctor where mention is only of two persons. Then there is recording of FIR by the police at Around 11.30 a.m. where a graphic description of entire incident is given with role attributed to each of the accused persons. It is worthwhile to note at this stage that when this statement at 11.30 is recorded, she was earlier been visited by her brother and father. The meeting of her relations prior to her making statement to police is not necessarily and incidently. It is only after these people met her that she disclosed to the police in a very graphic manner how each of her in-laws was involved in the incident attributing specific roles. Lastly in the statement recorded by Executive Magistrate there is not even the mention of the name of Damodar and the roles are reversed. It is in this state of evidence that the order of conviction has to be seen.

10. Reliance was placed by the learned counsel appearing for the appellants, on a judgment of the Supreme Court reported in Smt. Kamla Vs. State of Punjab, where the Supreme Court has categorically stated that where there are more than one declaration and which are not consistent with each other, when there existing material inconsistency between various dying declarations, it is unsafe to base conviction solely relying on any one of them. In the present case also there are more than three declarations made, there are material contradictions and inconsistencies between all of them.

11. In Dandu Lakshmi Reddy Vs. State of A.P., the Supreme Court has observed thus:

When the sphere of scrutiny of dying declaration is a restricted area, the Court cannot afford to sideline such a material divergence relating to the very occasion of the crime. Either the context spoken to in one was wrong or that in the other was wrong. Both could be reconciled with each other only with much strain as it relates to the opportunity for the culprit to commit the offence. Adopting such a

strain to the detriment of the accused in a criminal case is not a feasible course. Thus the court cannot sideline the difference in the version of the deceased as to what she was doing at the relevant point of time was not proper."

12. In the present case the situation is similar. There are material inconsistencies in the statements made from time to time by the victim. Since they are material and since reconciliation of this statement is not possible it is not possible for us to uphold the conviction relying any one of this statement. In our opinion, the evidence is grossly inadequate to sustain the order of conviction, which is passed solely on the dying declarations disclosing the fact that the husband is deposing against his own blood relations. A careful scrutiny of the evidence of P.w. 3 Mangesh the husband, would reveal that he was clinching by his brothers and all that he saw that his wife is burning. He is not an eye witness to the incident of burning. He stated what his wife told him and contradictions do exist there as pointed out above. Viewed from any angle therefore we find it improbable to sustain the order of conviction.

13. In the result therefore the appeal succeeds and must be allowed. It is hereby allowed. Those accused who are on bail, their bail bonds stand cancelled. If any accused is in custody, is liable to be released. Appeal accordingly disposed of.