
(2006) 07 SC CK 0034

In the Supreme Court Of India

Case No : Criminal Appeal No. 1619 of 2005

Rajendra and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 34, 498A

Citation : (2006) 3 ACR 2501 : (2006) 2 ALD(Cri) 586 : (2006) 2 DMC 456 :
(2006) 7 SCALE 662 : (2006) 10 SCC 759

Hon'ble Judges : B. P. Singh, J;Altamas Kabir, J

Bench : Division Bench

Advocate : A.M. Kanade and Aribam Guneshwar Sharma, for the Appellant;
Mukti Chowdhary, S.S. Shinde and V.N. Raghupathy, for the Respondent

Final Decision : Allowed

Judgement

B.P. Singh. J.

1. The appellants herein have impugned the judgment and order of the High Court of Judicature at Bombay, Bench at Aurangabad, dated 13.07.2005 in Criminal Appeal No. 153/1996. The High Court by its impugned judgment and order has affirmed the conviction and sentence of the appellants passed by the Trial Court under Sections 498A and 302 IPC read with Section 34 IPC. On the former count the appellants have been sentenced to undergo RI for two years and to pay a fine of No. 500/- and in default to undergo RI for six months. On the latter count they have been sentenced to life imprisonment and to pay a fine of No. 1,000/- each and in default to suffer further RI for one year.

2. The deceased Rekhabi was married to the appellant No. 1 herein on May 01, 1995. Appellant No. 2 was the father-in-law while appellant No. 3 was the mother-in-law of the deceased. The occurrence is alleged to have taken place on the night intervening 29-30 September, 1995 at about 2.30 a.m. The case of the prosecution is that the appellant No. 1 needed a sum of Rs. 20,000/- (Rupees

Twenty Thousand only) to obtain a job in the State Transport Department for which he had applied on the 10th August, 1995. He had asked his wife to convey the demand to her parents but the parents were unable to fulfill the said demand. According to the deceased she was being continuously beaten by the accused for the last about 3-4 days before the date of occurrence.

3. On the night of occurrence, according to the prosecution, while the deceased was sleeping she was called to the adjoining room and while appellant No. 1 held her, appellant No. 3 sprinkled kerosene oil upon her and appellant No. 2 set her on fire. After doing so they ran away. The deceased also ran out of the house and raised an alarm which attracted several persons to the place of occurrence which included PW-7 Devidas and PW-8 Bansilal, another neighbour. They threw a quilt on her and extinguished the fire. The deceased was removed to the local hospital for treatment. It is not disputed that she was brought to the hospital by her neighbours and her husband appellant No. 1 and father-in-law appellant No. 2. The Police Sub Inspector PW-9 on getting information about the occurrence rushed to the hospital and recorded the statement of the deceased in the presence of treating physician PW-11. In her report to the PSI (PW-9) she stated that she was called by the appellants and while her husband appellant No. 1 held 'her, appellant No. 3 sprinkled kerosene oil upon her and appellant No. 2 set her on fire with a match stick. The said report which was later treated as a dying declaration is said to have been recorded at 3.30 a.m. On the same day, a little later another dying declaration was recorded by a person nominated to act as Executive Magistrate by the Tehsildar for the purpose of recording dying declarations. PW-1 Dayaram Salave is the person who recorded the second dying declaration. The second dying declaration is to the same effect though specific role has not been assigned to the appellants as in the first dying declaration. There is, however, nothing inconsistent between the two dying declarations. The case of the prosecution is that later relatives of the deceased on coming to know of the incident came to see her at the hospital. From the record it appears that they came about 9.30 a.m.. PWs 2, 3, 4 and 6 were amongst the relatives who came to the hospital and in whose presence the deceased is stated to have made an oral dying declaration on the same lines as was stated in the first dying declaration before PSI PW-9.

The prosecution also examined PWs 7 and 8, the neighbourers who had helped in extinguishing the fire. Both these witnesses were declared hostile since they resiled from their earlier statements made in the course of investigation u/s 161 Cr.P.C. We also attach no weight to their evidence.

4. Learned Counsel for the appellants submitted that admittedly there were two other members of the family in the adjoining room. The deceased fact there is nothing to show that she tried to save herself or shout for help. According to him the conduct of the deceased was most unnatural since in the normal course she was expected to raise an alarm and cry for help which would have awakened other members of the family sleeping in the adjoining room. He has also

submitted that clothes of the accused persons had no sign of kerosene oil on them and therefore, their participation in the commission of the offence appears to be doubtful. He further submitted that when the deceased ran out and her neighbours extinguished the fire, she did not say anything to them as to who had set her on fire. He do not attach importance to these facts because the deceased may not have had opportunity of raising an alarm before she was set on fire, and it is not always necessary that the kerosene oil must also fall on the clothes of the perpetrators of the crime. So far as reporting to the neighbours is concerned the two witnesses, namely, PWs 7 and 8 had in the course of investigation made statements on this aspect of the matter, but since they resiled from their earlier statements they were declared hostile. We have discarded their testimony and therefore need not dwell on this aspect of the matter any more.

5. We find that the two written dying declarations and the one oral dying declaration are consistent. It may be that the second written dying declaration is not as detailed as the first one in that specific role has not been assigned to the appellants. We do not find any reason to discard the dying declarations which have been relied upon by the Trial Court as well as the High Court. It was sought to be argued before us that so far as the second dying declaration is concerned, it was recorded by PW-1 who was merely a senior clerk in the government department who was authorised to record dying declarations as an executive Magistrate authorised by the Tehsildar. It was submitted that the law does not permit the Tehsildar to nominate a clerk in the government department to perform the duties of an Executive Magistrate. It may be that the dying declaration recorded by PW-1 cannot be given the same sanctity as a dying declaration recorded by a Magistrate, but at the same time there is no law which mandates that a dying declaration should be recorded only by a Magistrate. No doubt more sanctity is attached to a dying declaration recorded by a Magistrate since the recording of dying declaration by a Magistrate assures the Court that the statement has been correctly understood and truthfully recorded by an impartial person. Even so, since there are three dying declarations and all of them are consistent, we do not attach much weight to the fact that the second dying declaration is not recorded by a Magistrate, and that it has been recorded by a person nominated by the Tehsildar to record dying declarations which in normal course is the duty of an Executive Magistrate.

6. The evidence on record is consistent and all the evidence points to the guilt of the appellants. We, therefore, find no merit in this appeal and the same is dismissed.