
(2004) 01 BOM CK 0070
In the Bombay High Court
Case No : Criminal Appeal No. 11 of 1999

Rajendra Trimbak Khairnar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 23-01-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2005) 2 DMC 565

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

Bench : Division Bench

Advocate : Savita Suryavamshi, for the Appellant; V.R. Bhosale, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Palshikar, J.—Being aggrieved by the judgment and order of conviction passed on 7.11.1998 by the III Additional Sessions Judge, Nashik, in Sessions Case No. 97 of 1998 convicting the appellant/accused u/s 302 of I.P.C. and sentencing him to suffer R.I. for life, the appellant/accused 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 of the defence and the learned Prosecutor we have scrutinised the entire record and have reappraised the evidence on record. The prosecution story as emerges from the reappraisal of the evidence stated briefly is that in the night of 29th and 30th March, 1998 there was a quarrel between the accused and his wife Meena, the deceased which culminated in the accused pouring kerosene from the stove on the body of the deceased Meena and putting her on fire, as a consequence of which she started shouting and sustained severe burn injuries. The victim Meena was then shifted to Civil Hospital, Nashik. Both the accused and Meena were admitted in the hospital as the accused has also sustained burn injuries. Looking to the burn injury police were informed and dying declaration of the deceased was recorded

in which she categorically stated that she was burnt by her husband because of their quarrel. On the basis of this statement, FIR was recorded and appellant was accordingly prosecuted for murdering his wife.

3. To prove its case the prosecution has examined as many as 8 witnesses. According to the prosecution, it has proved beyond reasonable doubt the guilt of the accused. The learned trial Judge placed reliance on the dying declaration Exit. 20 and the attending circumstantial evidence and came to the conclusion of guilt and sentenced the accused as aforesaid. It is against this order of conviction that the appellant has challenged the order before us.

4. The contention of the learned Counsel appearing on behalf of the appellant is that the victim Meena was not in a position to give any statement. The dying declaration is unreliable. The accused himself has sustained 18% burn injuries which goes to show that the accused tried to put off the fire which had accidentally caught the clothes of the deceased. According to the learned Counsel, the circumstantial evidence as placed before the Court is not adequate to require the recording of finding of guilt. He, therefore, prayed that the accused be acquitted.

5. These submissions were countered by the learned A.P.P. appearing on behalf of the State saying that the dying declaration is duly proved by the fact that the victim was in a position to speak and was well oriented mentally to make a statement. The dying declaration is recorded as required by law and there is, therefore, no reason that the order of acquittal be interfered with. According to the learned A.P.P. the attending circumstantial evidence is also enough and there is no error either of law or on fact committed by the learned trial Judge for which his order can be interfered with.

6. P.W. 1 Sanjay is the Panch witness of the Panchanama of the spot where half burnt match-sticks were found. The place was smelling kerosene. Half burnt Petticoat and Saree were also found. He accordingly proved the Panchanama of the spot.

7. P.W. 2 is Madhukar. He is the father of the deceased Meena. He deposed as to the addiction of the accused to liquor and the harassment meted out by the accused to his wife (daughter of this witness). He has deposed before the Court that when he learnt about the burn injuries sustained by his daughter, he went to see her and she told him that the accused had put her on fire. He was present in the hospital when the Executive Magistrate came to record his dying declaration. He categorically states that when the Magistrate arrived he asked all persons present to leave the surroundings and only the doctor, Magistrate and victim were there. He has, therefore, proved that there was sufficient cause or motive for the accused to burn his wife. He was habituated to the vices, needed money for those vices and harassed his wife to bring the money.

8. P.W. 3 Sudhakar is the Special Executive Magistrate who recorded the dying declaration of the victim. The deposition of this witness is very clear and

unambiguous. He categorically states that when he reached the hospital he requested the doctor to examine the patient whose statement has to be recorded and certify whether the patient was in a condition to depose both physically and mentally. The doctor then examined the victim and declared that she was physically and mentally well oriented to give statement. The Magistrate then asked all others present except the doctor to leave the room and proceeded to tell the victim who he was and on her understanding requested to give statement. The statement was duly recorded in question and answer form and in her statement the victim has very clearly stated that she was put on fire by her husband who poured kerosene from out of the stove on her person and lit it. In response to the question as to who extinguished the fire she states that she fell down and somebody extinguished the fire. It will be seen from this deposition, therefore, that the possibility of husband tried to extinguish the fire, having realised the blunder committed by him cannot be ruled out. It is in his deposition that Exh. 20 speaks and is the certificate given by the doctor that the patient is conscious and well oriented and able to talk and fit to give statement. Then it is the statement that the Magistrate asking every body to leave the place and follows the statement in question and answer form. This witness has endorsed the fact that the work of recording of statement of victim Meena ended at 5.20 in the morning. Then he requested the Medical Officer to examine the patient again and certify. Again he examined the patient and certified that the patient is fully conscious till the statement is over and also throughout the statement. He has then signed the certificate and noted the time. Every requirement of law for a proper and valid dying declaration is thus fulfilled in the present case. Both, the doctor who made the endorsement and the Magistrate who recorded the statement, have been duly examined and they have been cross-examined and there is nothing in their evidence to require their evidence being discarded.

9. P.W. 4 Ramesh has turned hostile. P.W. 5 Parvatibai is the person who took the victim to the hospital. P.W. 6 Ratnakar is the doctor who conducted the post-mortem. P.W. 7 Dattatraya is the Police Official who called the Special Executive Magistrate and P.W. 8 Ravindra is the doctor who was present when the dying declaration was recorded. Therefore, we are convinced that the learned trial Judge was right in convicting the accused u/s 302, I.P.C., on the basis of the dying declaration which was duly proved by the testimony of P.Ws. 3 and 8. The fact that the victim was conscious is proved, that the statement was recorded as required by law is proved and there is, therefore, no reason why such statement should be ignored or disbelieved. In the result, therefore, the appeal fails and it is dismissed.