
(2014) 07 BOM CK 0005
In the Bombay High Court
Case No : Criminal Appeal No. 1079 of 2008

Raju Kachru Adangale

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2014) ALLMR(Cri) 4085 : (2015) 1 BomCR(Cri) 696

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

Bench : Division Bench

Advocate : A.V. Bedekar, Appointed Adv, Advocate for the Appellant; H.J. Dedhia, APP, Advocate for the Respondent

Judgement

P.V. Hardas, J.—The appellant, who stands convicted for an offence punishable under Section 302 of the Indian Penal Code and sentenced to imprisonment for life, by the Ad-hoc Additional Sessions Judge-1, Nashik, by judgment dated 28/07/2008, in Sessions Case No. 98 of 2007, by this appeal challenges his conviction and sentence. Facts in brief as are necessary for the decision of this appeal may briefly be stated thus:-

PW 6 - Police Head Constable Nanasaheb Pimpalse, who was attached to the Nashik Road Police Station, received a message about admission of lady in the Bytco Hospital, Nashik Road on account of burns. On receipt of the said information, Police Head Constable Pimpalse proceeded to the hospital on 14/2/2007 at about 11.30 to 11.45 a.m. He submitted a requisition to the Medical Officer for ascertaining the condition of the injured. The said requisition is at Exh. 34. The Medical Officer, on examining injured Sharda, opined that she was in a fit condition to give her statement. Accordingly, PW 6 - Police Head Constable Pimpalse recorded the statement of injured Sharda at Exh. 35. Injured Sharda in her statement had clearly indicated that it was the appellant who had poured kerosene on her and had set her ablaze. Thus, she had attributed the act of setting her ablaze to the appellant, who was her husband. After recording the

dying declaration, a special report was submitted to the Executive Magistrate at Exh. 19.

PW 7 - API Ananda Hodge, who was attached to the Nashik Road Police Station was entrusted with the investigation of the crime which had been registered on the basis of the statement of Sharda. Accordingly, PW 7-API Hodge proceeded to the scene of the incident and in the presence of PW 2 - Sandip, drew the scene of the incident panchanama at Exh. 15. From the scene of the incident, he seized one stove, one match-box and two burnt pieces of saree. Bed cover and pillow cover were also burnt as well as some clothes which had been hanging on the wall. A sketch of the scene of the incident was drawn at Exh. 38. Statements of witnesses were recorded and on the same day at about 8.15 p.m. the appellant was arrested under an arrest panchanama at Exh. 39. The appellant was referred for medical examination under requisition at Exh. 40.

Injured Sharda succumbed to her injuries in the hospital on 18/2/2007. Accordingly, an inquest panchanama was drawn at Exh. 41. Section 302 of the IPC came to be added. Further to the completion of investigation, a charge-sheet against the appellant was filed.

Postmortem on the dead body of deceased Sharda was performed by the Medical Officer, General Hospital, Nashik, who noticed that deceased had sustained 100% burns. He, therefore, opined that Sharda had died due to shock due to 100% burns. The postmortem report is at Exh. 10.

2. On committal of the case to Court of Sessions, the trial court vide Exh. 4 framed charge against the appellant for offence punishable under Section 302 of the IPC. The appellant denied his guilt and claimed to be tried. Prosecution, in support of its case, examined seven witnesses. The defence of the appellant was of denial. The trial court, after appreciation of the evidence, convicted and sentenced the appellant as afore-stated.

3. The prosecution relies upon the oral dying declaration made by deceased Sharda to PW 1 - Prashant, her son-in-law. According to PW 1 - Prashant, on the day of the incident he had received a message that Sharda had sustained burns. He had accordingly gone to the house of the appellant and thereafter had taken Sharda to the hospital. In the hospital, Sharda had informed him that the appellant had poured kerosene on her and set her ablaze.

4. Prosecution has examined PW 3 - Shivkumar, the Special Executive Magistrate, who had recorded the dying declaration at Exh. 20 as well as PW 6 - Police Head Constable Pimpalse who had recorded the dying declaration at Exh. 35. PW 5 - Dr. Gavit had examined the injured and had opined that she was in a fit condition to give her statement. In our opinion, both the dying declarations at Exh. 20 as well as Exh. 35 cannot be relied upon for sustaining the conviction of the appellant as there is no evidence that the dying declarations had been read over to the declarant and the declarant had admitted the contents to have been correctly recorded. In the absence of such evidence, the dying declarations

cannot be made the foundation for sustaining the conviction. A reference in this behalf may usefully be made to the judgment of the Supreme Court in Shaikh Bakshu and Ors. vs. State of Maharashtra ((2008) 1 SCC (Cri.) 679) : (2007 ALL SCR 2407) and Abdul Riyaz Abdul Bashir vs. State of Maharashtra (2012 ALL MR (Cri.) 2188).

5. It further appears that a disclosure was made by injured Sharda to the Medical Officer who had examined her. The said Medical Officer has not been examined. The signature of the Medical Officer is proved by PW 5 - Dr. Gavit. The medical case papers did not disclose that the history was narrated by the injured. In the absence of the Medical Officer as well as in the absence of a specific statement that the history was narrated by the injured, the dying declaration made to the Medical Officer cannot be made use of by the prosecution. Thus, the only piece of evidence which can be relied upon by the prosecution is the oral dying declaration made by injured Sharda to PW 1 - Prashant. According to us, the aforesaid oral dying declaration would be a fragile piece of evidence in the absence of other corroborative evidence for sustaining the conviction of the appellant. Resultantly, therefore, we allow the appeal and quash and set aside the conviction and sentence of the appellant and acquit him of the offence with which he was charged and convicted. Since the appellant is in jail, he be released forthwith, if not required in any other case.

Fees payable to the learned counsel appointed for appellant quantified at Rs. 5000/-.