
(2002) 06 BOM CK 0028
In the Bombay High Court
Case No : Criminal Appeal No. 233 of 1997

Rangrao Laxman Rathod

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 19-06-2002

Acts Referred:

Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 299, 300

Citation : (2003) 2 DMC 285

Hon'ble Judges : V.M. Kanade, J;R.K. Batta, J

Bench : Division Bench

Advocate : M.R. Daga, for the Appellant; Tejaswini Khade, APP, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Batta, J.—Appellant was tried for murder of his sister-in-law viz., the wife of his elder brother Tukaram Rathod (P.W. 1) by burning her. The prosecution case is that about one year prior to the incident, legs of Tukaram (P.W. 1) were amputated and he was lame since then. Taking advantage of the situation that Tukaram had become lame, appellant was trying to persuade his wife Purnabai to have illicit relation with him. Appellant is said to have made attempts in that direction and more particularly about a month prior to the incident when he entered the house of his brother at about 11.00 p.m., pulled the legs of Purnabai in order to have sexual relations with her, but since she raised cries and her husband got up, appellant ran away. On 12.6.1990 at about 11.00 a.m. while Tukaram was taking meals and Purnabai was standing near the door, appellant came from outside, poured kerosene on the person of Purnabai and set her on fire. Appellant ran away after setting her on fire. Purnabai raised hue and cry as a result of which two ladies, viz. Manoramabai and Zingabai came and extinguished fire. Purnabai was taken to hospital at about 1.30 p.m. and she informed the doctor in presence of staff nurse that it was the appellant who had poured kerosene and set her on fire. She had suffered 96% burns. Later, her

dying declaration was also recorded by the Executive Magistrate wherein again she confirmed that it was the appellant who had set her on fire after pouring kerosene. The Trial Court after relying upon the evidence of Tukaram Rathod (P.W. 1), Dr. Pawade (P.W. 7), Staff Nurse Vatsala (P.W. 6), Dr. Khan (P.W. 10) and Executive Magistrate Ambadas Samarth (P.W. 5), held the appellant guilty for murder of Purnabai. The Trial Court in its judgment threadbare considered the contentions advanced by the defence as also the evidence on record for coming to the said conclusion.

2. Learned Advocate for appellant urged before me that the appellant has been falsely implicated on account of enmity between him and his brother Tukaram (P.W. 1); that there has been considerable delay in recording the statements of said Tukaram on account of which reliance on his testimony by the Trial Court was misplaced. In respect of dying declaration (Exhibit 34), it is urged that the doctor has not given certificate that the patient was in a fit state of mind to give statement and that taking into consideration the fact that deceased had suffered 96% burns, it would not be possible in such state for her to give any statement at 5.00 p.m. on the same day of the incident. In respect of dying declaration (Exhibit 39), it is urged that the thumb impression of the deceased has not been obtained and, as such, it cannot be said that the said dying declaration is that of the deceased. On the basis of the above submission it is argued that the prosecution has not been able to prove the charges beyond reasonable doubt and benefit of doubt be given to the appellant-accused.

3. Learned APP, on the other hand, has contended that the Trial Court has considered each and every piece of evidence in its judgment as also the contentions which are now sought to be raised in appeal and that there is absolutely no reason or justification to interfere with the findings of the Trial Court which are based on material on record.

4. The prosecution case rests upon the eye-witness account of Tukaram Rathod (P.W. 1); statements made by deceased before the doctor as also Executive Magistrate as also that of the staff nurse before whom the statement was made by the deceased. The defence has tried to raise issue as to whether burning was suicidal and in this respect one defence witness was also examined whose testimony was rightly discarded by the Trial Court by elaborate reasons.

5. Tukaram (P.W. 1) who is husband of the deceased has stated that about one month prior to the incident, he was sleeping along with his wife and children and at about mid-night, appellant entered in his house; pulled the leg of his wife asking her to have sexual intercourse with him, but his wife raised cries on account of which he got up and the appellant escaped. He has further stated that even earlier to the incident also, the appellant used to ask his wife that her husband is lame so she should have sexual relations with him, but his wife refused. He has further stated that on the day of incident at about 10.00 a.m. he was taking meal and his wife was talking with him while standing near the door and at that time appellant came from back side, poured kerosene on his wife,

lighted match-stick and set her on fire and thereafter he escaped. He has further stated that he was helpless as he is lame and could do nothing. The deceased went towards front of the house of Namdeo Rathod and his maternal aunt and niece Mannu extinguished fire. She was taken to the hospital by said Namdeo who also informed the Police Patil. This witness was cross-examined at great length, but nothing material could be elicited during his cross-examination so as to disbelieve this witness. The Trial Court had benefit of observing demeanour of this witness and believed this witness. We have absolutely no reason to take different view of the deposition of Tukaram (P.W. 1) who has in categorical terms proved that it was the appellant who had sprinkled kerosene on his wife and set on fire.

6. Deceased Purnabai was taken to hospital by Namdeo Rathod (P.W. 2). In the hospital, she was treated by Dr. Pawade (P.W. 7) who has stated that on 12.6.1990 while she was on duty, burnt patient was brought in the hospital at 1.30 p.m. in bullock cart. He started medical treatment and asked the said patient, viz. Purnabai as to who had set her on fire and she disclosed to him that it was her younger brother-in-law Rangrao who had poured kerosene on her and set her on fire. Doctor recorded statement of the deceased in question-answer form on OPD Card and the case papers. He has further stated that he had recorded the statement of deceased in question and answer form and the said statement is Exhibit 39. Learned Advocate for appellant has urged before us that before recording statement, the doctor has not recorded his satisfaction that the patient was in a fit condition to give statement. The fact that Dr. Pawade (P.W. 7) has himself recorded the statement of deceased by itself shows that he was satisfied that the patient was in a fit mental state to give statement and in the circumstances it was not necessary for Dr. Pawade (P.W. 7) to specifically record this fact before recording her statement. According to him, the deceased had sustained third degree burns to the extent of 80-85%. He further confirmed during cross-examination that as dying declaration was to be recorded, he had not given her Diazepam. This witness was also cross-examined at length, but nothing material could be elicited during cross-examination.

7. It is urged by learned Advocate for appellant that thumb impression of the deceased was not taken on the statement recorded by Dr. Pawade (P.W. 7). The said witness stated that he had not taken thumb impression on Exhibit 39 since hands of deceased Purnabai were burnt. He is a totally disinterested witness and there is absolutely no reason to disbelieve his testimony. The evidence of this witness is corroborated by sister P.W. 6 Vatsala who has stated that at about 1.30 p.m. one bullock cart entered into the compound of hospital in which there was a lady who had sustained burn injury. She has further stated that doctor asked her as to who had set her on fire on which she gave the name of her brother-in-law as Rangrao Rathod. She further stated that doctor had asked the patient the reason to set her on fire on which patient replied that her husband was lame and appellant was asking her to have an affair with her. She confirmed that both the hands of deceased were burnt. She was also cross-examined, but

could not be shaken during cross-examination and she stood to the test of cross-examination.

8. In addition to the above evidence, there is dying declaration recorded by the Executive Magistrate Ambadas Samarth (P.W. 5). In this connection, the prosecution has also examined Dr. Khan (P.W. 10) who has stated that the Executive Magistrate Shri Samarth asked him whether patient is fit to tender her statement or not. According to Dr. Khan (P.W. 10), the deceased was physically and mentally fit to tender her statement and the dying declaration was recorded in his presence. He also issued certificate on the dying declaration. The said certificate is at Exhibit 53 and after the dying declaration was concluded he again recorded certificate (Exhibit 54). He admitted in cross-examination that in Exhibit 54 there is no mention of condition of the patient at the end of dying declaration. However, it is pertinent to note that Dr. Khan (P.W. 10) was present when the dying declaration was recorded and as such he observed condition of the patient. He further stated that while examining patient he checked her pulse beats, blood pressure and respiration. Thus, with the help of evidence of Dr. Khan (P.W. 10), it is amply proved that the deceased was physically and mentally fit to tender her statement. Even if such declaration in so many words is not recorded in the dying declaration, the doctor who examined the deceased has categorically stated that Purnabai was physically and mentally fit to tender her statement. Dr. Khan (P.W. 10) is a disinterested witness and there is absolutely no reason to disbelieve him unless defence was able to specifically make out a case so as to disbelieve his testimony. Executive Magistrate Ambadas Samarth (P.W. 5) has stated that after receiving memo from City Police Station, he went to record dying declaration of Purnabai. He went to the Main Hospital at Yavatmal where Dr. Khan was on duty. He asked the doctor as to whether patient was physically and mentally fit to tender dying declaration. Doctor examined her and stated that she was physically and mentally fit to give dying declaration. Thereafter he recorded dying declaration and at that time, besides the deceased and doctor no one else was present. He has further stated that he asked her as to how she sustained the burns and how the incident occurred on which she replied that her younger brother-in-law (Deer) had set her on fire. He confirmed that he had recorded dying declaration of the deceased as per statement given by her and he has proved dying declaration recorded by him. During cross-examination he has stated that doctor had checked pulse beats, temperature and asked questions to deceased. Executive Magistrate Ambadas Samarth (P.W. 5) also ascertained for himself that deceased was fit to make statement. He found that she was properly answering the questions. The testimony of this witness once again could not be shaken in cross-examination.

9. There is thus overwhelming evidence on record to prove the charge of murder of Purnabai by burning as against the appellant. The testimony of all these witnesses upon which reliance is placed is not only trustworthy, but they have stood the test of lengthy cross-examination and could not be shaken during cross-examination. The prosecution case gets ample corroboration from the

witnesses examined during the course of trial. We have already observed that the Trial Court has threadbare considered all evidence on record and after examining the evidence of the witnesses, we are of the view that the prosecution has proved the charge against the appellant.

10. In view of this, we do not find any merit whatsoever in this appeal. Appeal is accordingly dismissed.