
(2008) 11 BOM CK 0023
In the Bombay High Court
Case No : Criminal Appeal No. 530 of 2003

Ravindra Bangar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 21-11-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307, 498A

Citation : (2008) 11 BOM CK 0023

Hon'ble Judges : K.J. Rohee, J;A.P. Bhangale, J

Bench : Division Bench

Advocate : S.A. Brahme, for the Appellant; A.S. Sonare, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—Appellant questions legality and validity of judgment and 1st order passed by Ad-hoc Additional Sessions Judge, Akola in Sessions Trial No. 102 of 2002 whereby learned trial Judge convicted appellant for the offence of murder punishable u/s 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay fine in the sum of Rs. 500/-, in default, to suffer rigorous imprisonment for one month.

2. Prosecution case, briefly stated, is that deceased Girija was wife of appellant Ravindra, both residents of village Donwada, Taluka Akot, District Akola. She was admitted in Government Hospital, Akola after she suffered burn injuries on 14.3.2002 at about 07.00 am. She implicated her husband Ravindra Bangar on the ground that he had poured kerosene on her person; set her on fire and ran away from the house. PW 4 Ashok Topre, P.C. B/No. 1783 registered Crime No. 19/2002 u/s 307 of the Indian Penal Code against Ravindra (appellant) at Dahihanda Police Station. Investigation was entrusted to PSI Varadhe (PW 11) who proceeded to the spot and drew spot panchanama and conducted initial investigation. Injured Girija who was admitted in Government Hospital, Akola

expired on 17.3.2002 at about 10.00 p.m. Inquest was held over dead body under panchanama drawn by Head Constable Kishor, B/No. 1825 from City Kotwali Police Station, Akola. The dead body was referred for postmortem examination done by Dr Kalane (PW 5). Thus, upon receiving information as to death of Girija on 19.3.2002 offence punishable u/s 302 of the Indian Penal Code was substituted/added. Appellant Ravindra was arrested on 23.3.2002. The articles seized during investigation were sent to Chemical Analyser, Nagpur.

3. The appellant was charge-sheeted in the Court of Judicial Magistrate, First Class, Akot who committed the case on 13.6.2002 to the Court of Sessions at Akola giving rise to Sessions Trial No. 102 of 2002. Charge was framed u/s 302 and also u/s 498A of the Indian Penal Code to which appellant pleaded not guilty and claimed trial.

4. The prosecution examined eleven witnesses and also placed reliance upon documentary evidence in the form of dying declaration recorded by PW 6 Noor Ahamad Khan together with circumstantial evidence inclusive of medical evidence led in the case. In his statement u/s 313 Cr.P.C. appellant, answering questions, denied liability for the crime.

5. We have heard learned counsel for the appellant and learned Additional Public Prosecutor for State. 6. Learned counsel for the appellant submitted that the evidence of dying declaration (exhibit 39) is not trustworthy and acceptable for following reasons :

(a). Girija had sustained 99% burns and hence evidence as to her fitness to make dying declaration is doubtful.

(b). She must be unable to speak because her lips were totally burnt and function of her skin had completely stopped.

(c). According to Executive Magistrate (PW 6) he had obtained right toe impression on dying declaration. Clear ridges and curves were doubtful.

(d). Endorsement by doctor as to fitness of Girija to make statement is not acceptable.

(e). There was possibility of suicide by Girija as injuries were on her front side and not on back side. Kerosene oil can would have been completely empty after kerosene was poured.

(f). There was possibility of tutored witness as PW 2 Anita and PW 10 Gajanan resided with their maternal uncle.

(g). On bed-head ticket in the Hospital, it was written .burnt by herself. and the words were scored off.

(h). Witness who had reached the spot first after incident was not examined.

7. Learned Additional Public Prosecutor for the State, on the other hand, supported impugned judgment and order contending that there was sufficient

reliable evidence of dying declaration well supported by medical and other circumstantial evidence to eliminate doubts expressed and to clearly indicate that author of crime was none other than the appellant.

8. We have gone through the evidence on record as also judgment and order passed by the trial Court to examine contentions raised before us.

9. It appears from the evidence that prosecution case is based upon evidence of dying declaration about which Mr Noor Ahamad Khan, Executive magistrate (PW 6) deposed. It appears from his evidence that he had, upon receipt of memo (exhibit 38), visited Main Hospital at Akola to record dying declaration. After he ascertained from Dr Gosavi as to whether Girija was in conscious state of mind and able to make statement, he proceeded with Dr Gosavi who examined patient and was satisfied that patient Girija Ravindra Bangar was conscious and able to give statement. PW 6 Noor Ahamad then recorded her statement. He also obtained toe impression of right foot of Girija upon her statement which she admitted as correct. Dr Gosavi had again examined Girija to certify that she was conscious and able to make statement (vide exhibit 39). PW 6 Noor Ahamad also explained as to why toe impression of right foot of Girija was taken as according to him, both hands of Girija were burnt. It appears that before Executive Magistrate Mr Noor Ahamad recorded dying declaration of Girija Ravindra Bangar, he had obtained medical endorsement from Dr Gosavi on 14.3.2002 at 12.00 noon that she was fully conscious and fit to give dying declaration. Then dying declaration was recorded until 12.10 pm which revealed that while said Girija was sleeping on the cot, her husband came from outside, poured kerosene from the can on her person and ignited her with match-stick and he ran away after closing door from outside. She sustained burn injuries, shouted and neighbouring people who came to rescue her tried to extinguish fire by pouring water. Thus, dying declaration recorded clearly implicates her husband Ravindra. PW 6 Noor Ahamad had again obtained endorsement from Dr G.A. Gosavi, Medical Officer from Government Hospital, Akola to indicate that patient was fully conscious throughout while her dying declaration was recorded. Dr G.A. Gosavi (PW 7) also deposed that he was approached by Executive magistrate Mr Khan who asked him to give opinion about competency of Girija to give statement. He deposed further as to the fact that he found upon examining Girija that she was competent to make dying declaration. Dr Gosavi certified accordingly and then Executive Magistrate recorded statement as per her say. Thus, in presence of Dr G.A. Gosavi, while Girija was fully conscious and competent to make statement; her dying declaration was recorded with necessary medical certificate as to fitness and consciousness of the declarant Girija. Thus, reading evidence of PW 6 Noor Ahamad and PW 7 Dr Gosavi in juxtaposition, we have no doubt in our mind whatsoever to believe that deceased Girija notwithstanding the fact that she had sustained 99% burn injuries, she was medically fit to speak and make a conscious statement to Executive Magistrate Mr Khan. Both these witnesses are well educated responsible witnesses and had no axe to grind against the appellant. The contention on behalf of the defence that Girija's lips were totally

burnt and she was unable to make statement due to 99% burn injuries cannot be accepted.

10. Next contention on behalf of the appellant is that right toe impression obtained on dying declaration by the Executive Magistrate (PW 6) indicating clear ridges and curves is also doubtful as function of the skin had completely stopped. This contention is based upon admission elicited from Dr Kalane (PW 5) who had performed postmortem notes. Dr Kalane's evidence indicates that all injuries observed were ante mortem, sufficient to cause death. He also clarified that even if the dorsal portion of the foot is burnt, palmer portion remains intact though it is called total burn of the foot. The evidence of Dr Kalane is clear on the point that the person receiving 99% burn injuries can speak well before two or three days of death. The admission elicited from Dr Kalane that function of the skin had completely stopped would not impress, because Dr Kalane whose educational qualification is BAMS as admitted by him in cross-examination, was not present when dying declaration was recorded.

11. It is next contended that bed-head ticket of the patient mentioned words, .burnt by herself. which were scored off and, therefore, it was a case of suicide and not murder as injuries were on front side and not on back side of the body. We have carefully examined evidence to appreciate this contention. Dr Sunita Meshram (PW 9) explained that history of the patient was supplied by relative of the patient and she had not inquired with the patient Girija. Thus, defence cannot make any capital out of remark by Dr Sunita Meshram which she had clarified. We cannot accept the contention that Girija must have committed suicide and that she was not murdered by her husband. The contention that entire kerosene can would have been emptied also does not carry any weight. We cannot ignore the evidence of PSI Varhade (PW 11) who also had occasion to record statement of patient Girija on 15.3.2002. He had sought medical opinion of Dr Sunita Meshram (PW 9) regarding fitness and consciousness of Girija before recording her statement (exhibits 50 & 50A) which also implicated the appellant as author of crime of wife- burning.

12. The prosecution has also relied upon evidence to corroborate dying declarations, as above. PW 10 Gajanan (son of appellant) deposed that on 10.3.2002 at noon time, his father (appellant) gave threat to his mother that either he will die himself or he will cause her death. He made oral report which was written by police as per exhibit 31. PW 1 Haridas (brother of deceased) deposed about oral dying declaration by his sister Girija when he inquired about the incident; she told that Ravindra (appellant) had poured kerosene on her person and igniting her by match-stick he ran away. PW 2 Anita (daughter of appellant and deceased Girija) also deposed about quarrel between her parents prior to the incident on 14.3.2002 as appellant was demanding amount from Girija for drinking liquor and beat her for not giving money. We cannot ignore overwhelming evidence led in the case irrevocably pointing towards guilt of the appellant. The defence contention that children of the appellant and deceased

Girija resided with Haridas (their maternal uncle) and were tutored is not acceptable. In our opinion, the witnesses had no grudge or animus against the appellant to falsely implicate him in serious crime of murder. The evidence as to dying declarations made by Girija (deceased) appears to be true, reliable and well-corroborated in this case. Legal position is clear that if dying declaration is true, reliable and voluntary it can be acted upon even without corroboration. The evidence that it was by a fit and conscious maker assures guarantee and full confidence in judicial mind as wife facing imminent death is not likely to tell lies or concoct a case against her own husband. Truth cannot be doubted in such case.

13. The trial Court was justified to hold appellant guilty of murdering his wife Girija and rightly convicted him. The appeal is without merit and deserves dismissal which we direct. Fees of Mr S.A. Brahme, learned counsel (appointed) is quantified at Rs. 750/-.

14. At this stage, it is necessary to take note of application received from appellant through Jailor, Central Prison, Amravati. Appellant has stated that he has excelled as an artist and remission was also granted to him in accordance with Prison Rules. He has prayed for premature release. In our opinion, the appellant may move the State Government for his early release in accordance with the rules and if he so applies, his premature release may be considered by the appropriate authority strictly in accordance with rules applicable in that behalf.

15. In the result, appeal is dismissed.