
(2014) 02 BOM CK 0175
In the Bombay High Court
Case No : Criminal Appeal No. 585 of 2011

Sakharam Shankar Garje	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

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

Citation : (2014) ALLMR(Cri) 3858 : (2014) 2 BomCR(Cri) 274

Hon'ble Judges : V.M. Deshpande, J;S.S. Shinde, J

Bench : Division Bench

Advocate : R.D. Sanap, for the Appellant; S.G. Chincholkar APP for State, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—Being aggrieved by the judgment and order dated 11th March, 2011 passed by the Sessions Judge, Beed in Sessions Case No. 77/2010, the appellant/accused has preferred this criminal appeal. It is the case of the prosecution that the present appellant/accused and his wife Suman (referred to as "the victim" hereinafter) resided at Khilne Vasti Surudi, taluka Ashti, District Beed. On 16th February, 2010, the accused and the victim were at residence. At about 8 p.m. On that day, the accused poured kerosene on the person of the victim and set her on fire with the help of a burning lamp (chimney). It is the prosecution case that the accused quarreled with the victim to satisfy his need of money for drinking liquor since he was habitual to same. After the said incident, people from the locality including PW 1 Sakharabai arrived at the spot and the victim was taken to the hospital. Accused absconded from the spot after the incident.

2. On the basis of the statement given by the victim in the hospital, complaint (Exh. 35) was recorded. Offence was registered vide Crime No. 77/2010 u/s 498-A read with section 307 of I.P.C., at Ashti Police Station. Investigation was

entrusted by Police Inspector Gaikwad to P.S.I. Malwade. After death of the victim, offence was altered to section 498-A read with section 302 of I.P.C. On 18.02.2010, the Investigating Officer conducted the spot panchnama at Exh. 45 and also seized articles from the spot. On 22nd February, 2010, the Investigating Officer received information that the victim had succumbed to injuries. On 23.2.2010, the accused was arrested from his village. During the treatment of the victim in the hospital at Ahmednagar, apart from Exh. 35 recorded by Constable Shinde, dying declaration at Exh. 33 was recorded by the Special Judicial Magistrate Ghungarkar PW 7.

3. The Investigating Officer, on 6th March, 2010 requested the Tahsildar to draw a map of scene of offence. The said map is at Exh. 53 obtained from the Tahsildar on 19th March, 2010.

4. The original post mortem notes of Dr. Gade and also the Muddemal seized at the spot were sent for chemical analyzer's report. After receipt of the report of Chemical Analyzer, it was filed in the Court on 13th October, 2010. On 19th May, 2010, charge-sheet was filed and thereafter, charges were framed. The accused pleaded not guilty. Therefore, full-fledged trial was conducted and by the impugned judgment and order, the appellant came to be convicted for the offences as alleged against him. Hence, this appeal.

5. The learned Counsel (appointed) for the appellant-accused invited our attention to the notes of evidence and submits that the prosecution evidence suffers from serious infirmities, omissions and contradictions. It is submitted that medical history shows that the victim died due to accident. It is submitted that P.W. 2 Vishnu brother of the victim admitted in his cross-examination that he told the victim how to give the statement to the police and, therefore, according to the learned Counsel for the appellant-accused, the complaint-first dying declaration recorded by the Constable Shinde and all other evidence is required to be disbelieved. It is further submitted that there was no any intention or motive as such to kill the victim. It is submitted that the appellant accused has been acquitted of the offence punishable u/s. 498A of IPC. It is further submitted that the dying declaration recorded by the Special Judicial Magistrate suffers from serious infirmities. The Counsel also submitted that the said magistrate is in habit of recording stereo type dying declarations. He invited our attention to the judgment of this Court in case of Keshav Dada Sangle & Anr. vs. State of Maharashtra 2011 ALL MR (Cri.) 2223. and submitted that in case where multiple dying declarations are there, it is required to be seen whether inter se there is material variance. The learned Counsel further submitted that the evidence of son of the accused is hearsay. It is submitted that death is accidental and therefore, the impugned judgment and order deserves to be set aside. It is submitted that though there was another doctor in-charge of Burns Ward, Dr. Ghule examined the patient and also gave endorsement on the dying declaration. In fact, when an expert doctor was available, there was no reason for the prosecution to ask Dr. Ghule to examine the patient and give an endorsement.

6. On the other hand, learned APP for the State submits that both the dying declarations are consistent with each other. There is no variance as such. There is proper recording of dying declaration, same has been endorsed by the doctor and at the time of recording dying declaration, victim was in a fit mental condition and well oriented to give her statement. It is submitted that the appellant/accused has admitted in his statement u/s. 313 of Code of Criminal Procedure that quarrel had taken place. It is submitted that the appellant accused has admitted his presence at the time of incident and, therefore, he was bound to explain under what circumstances victim caught fire and died. It is submitted that the conduct of the appellant-accused is required to be seriously viewed since he was not present for funeral and was arrested on 23rd February, 2010. Therefore, according to the learned APP, appeal deserves to be dismissed.

7. We have given anxious consideration to the submissions of the learned Counsel for the appellant and the learned APP for the State and also perused the entire evidence placed on record and the original record made available for our perusal. We would like to re-appreciate the evidence of the prosecution witnesses and also two dying declarations, one recorded by the constable Shinde on 17th February, 2010, which is at Exh. 35 and another recorded by the Special Judicial Magistrate, which is at Exhibit 33.

8. Upon perusal of the first dying declaration at Exh. 35 recorded by constable Shinde, it appears that there is an endorsement of the medical officer as "patient is in a condition to give statement." It further appears that the said dying declaration was read out to the victim and victim stated that the contents of the said dying declaration were correct. It is stated in the said dying declaration by the victim that on 16th February, 2010 at about 6 p.m., her husband returned to house from his work, he was under influence of liquor. The victim was cooking food on a stove. They received a phone call from their son Mahadeo who is at Bangalore in Karnataka. The accused asked the victim whether she wants to cook food quickly or not, and started abusing her and assaulted the victim. In continuation of the said act, husband poured kerosene from drum on the person of the victim and by burning lamp ignited "Sari" on her person. Due to the said act of the accused, the victim started shouting and she came out of house. One Vishnu Kekan and other adjoining neighbours came and poured water on her body and extinguished fire. She further stated that in the same incident, she suffered burns on her entire body. She stated that villagers took her to the hospital at Nagar and she is under medical treatment and fully conscious she stated the dying declaration is read over to her and, same is correct as per her narration.

9. Prosecution has examined PW 4 Ajay Laxman Laad. His evidence is at Exh. 18. We have considered his evidence in its entirety. In his cross-examination, he stated that he told Suman-victim how to give statement to the police. His version in vernacular as appeared in the cross-examination is Therefore, so far as first dying declaration is concerned, in view of the admission of PW 4 Ajay that he

stated to victim how to give statement to police, the first dying declaration is not believable and, therefore, we discard the same.

10. There is another dying declaration at Exh. 33 recorded by the Special Judicial Magistrate Ghungarkar PW 7. Upon careful perusal of the said dying declaration, it appears that the said dying declaration was recorded on 17th February, 2010. It appears that on the request of Tofkhana Police Station, the Special Judicial Magistrate proceeded to record the statement of victim in Government Hospital at Ahmednagar. He met Dr. Jaideep Deshmukh, Medical Officer on duty and asked him to give endorsement whether the patient is conscious and well oriented to give statement. The said doctor gave endorsement that "patient is conscious and well oriented and can give statement". The said endorsement was given on 17th February, 2010 at 11.15 a.m. It appears that the Special Judicial Magistrate asked the relatives and also the police officers to go outside the ward and after they went outside the ward, he ascertained that there was no any other person nearby the patient. He further ascertained that the victim is in a fit mental condition and well oriented to give statement. He appraised the victim at about 11.18 p.m. that he has come to record her statement. He asked her name and place of residence. The victim replied her name as Suman Sakharam Garje, r/o Suradi, Tq. Ashti, Dist. Beed. It was further asked, whether she knows Marathi language and answer was in the affirmative. The Magistrate further asked the victim as to how many persons are residing in her house and in reply, victim stated that she along with husband and other three children resides in the house. The Magistrate further asked the victim to tell without fear the truth as to how she suffered burns. In reply, she stated that on 16th February, 2010 (Tuesday) at about 8 p.m. she suffered burns. Her husband works as driver occasionally, some times he is doing job of driver in Mumbai area and some times, he resides at Suradi in their own house. There is small piece of land owned by family and victim works in the said land and also as agricultural labourer in the field of other farmers. Husband is in habit of drinking liquor. On many occasions, she told her husband not to drink liquor. However, in spite of her advice, her husband consumes liquor and demand money. She works as a labourer, some small amount is saved so as to purchase household articles. Her husband used to quarrel with her and by pressurizing her, used to demand money. He used to abuse and also assault her frequently. Prior to four days on the day of Shivratri her husband returned back to the house. Their two sons reside outside village for work and one for taking education. She stated that yesterday i.e. on Tuesday she went for labour work in agricultural field of some other farmer. She returned back in the evening from work. Since flour was not available, she started cooking rice by igniting stove. At that time, she received message that, there is phone call to her from her son on telephone in the neighbours house. Therefore, she went to receive said call and returned back thereafter to house. Husband was sitting at the door. She learnt that her husband was consuming liquor since afternoon and therefore, she told her husband to do some work instead of consuming liquor, so that it would be helpful

for the welfare of their family. Husband started abusing her by uttering abusive words. When she entered inside the house, the husband came and gave four-five fist blows and lifted kerosene drum and poured kerosene on her person. The lamp (chimney) was burning in house. He lifted the same and set her sari on fire. After sari, petticoat started burning. Thereafter, when she started shouting, her husband left the house. She removed her burning sari and ran outside the house on small platform in front the house. She started rolling on the ground. Outside the house, one Vishnu Kekan and her nephew's wife Sakhar came there. Sakhar started pouring water on her person. Thereafter, other people also arrived there. Husband did not stay there. Neighbours and other villagers took her to hospital in a jeep. She further stated that, her husband continuously ill-treated her and troubled her and he poured kerosene on her person and set her on fire. He has not even come to see whether she is alive or dead. She stated that, the statement was recorded as per her narration and contents of dying declaration were read over to her and same are correct. It appears that the victim has put her thumb impression of left hand at the end of the said dying declaration. The Medical Officer has also put his endorsement as "patient is conscious and oriented throughout statement and at the end of statement."

11. Upon careful perusal of the said dying declaration, there is endorsement of the Medical Officer in the beginning that "patient is conscious and well oriented and can give statement". Said endorsement has been given on 17th February, 2010 at 11.15 a.m. and same is given Exh. 25. Thereafter, it further appears that the dying declaration is given Exh. 33. As already observed, there is also endorsement at the end at 11.55 p.m. that patient is conscious and oriented through out statement and at the end of the statement", which endorsement is given Exh. 27.

12. Learned Counsel for the accused-appellant submitted that there is possibility of adding some sentences at the end of dying declaration. However, upon perusal of the dying declaration in its entirety and even the concluding part, we do not find any tampering or subsequent insertion of words in the said dying declaration. The said dying declaration fulfills the requirement of procedural aspects inasmuch as, there is endorsement of the Medical Officer in the beginning and at the end of the dying declaration. It further appears that the Special Judicial Magistrate by asking certain questions to victim, has ascertained that the victim was in a fit mental condition, well oriented to give dying declaration. It further appears that, victim stated that the contents of said dying declaration are as per her narration and same was read over to her.

13. In the present case, apart from two dying declarations recorded by the Police Constable and the Special Judicial Magistrate, respectively, there are four oral dying declarations made by the victim to PW 1 Sakharabai w/o Dinkar Garje, PW 2 Vishnu Maroti Garje, PW 4 Ajay Laxman Laad and PW5 Sainath Sakharam Garje. PW 1 Sakharabai stated in her evidence before the Court that on the date of incident, she was in her house. She saw some fire in front of the house of the

accused. She went running towards house of the accused. By that time, one Vishnu Kekan already came there. Sumanbai wife of the accused was ablaze. They tried to extinguish the fire. She poured water on Suman and tried to extinguish fire. Many villagers gathered there. Jeep owned by Anna driver was brought from Suradi village and thereafter, one Vishnu Garje, Anna driver and other villagers took Suman to the Government Hospital, at Nagar. In vehicle, on the way to the hospital, Suman told them that her husband set her on fire. It further appears that in cross-examination, she stated that Suman's health condition was not good. The defence Counsel, relying upon the cross-examination of this witness, submitted that Suman was not in a fit mental condition and conscious in vehicle so as to believe that Suman told to PW 1 Sakharabai and others that, accused set her on fire. However, it appears that there was re-examination of PW 1 Sakharabai by the Public Prosecutor and in the said re-examination, PW 1 reiterated that Suman told that her husband set her on fire. Therefore, the evidence of PW 1 Sakharabai is trustworthy.

14. There is evidence of PW 2 Vishnu Garje at Exh. 12/C. In his evidence, he stated about the number of members in the family of the accused and other details about the said family and, thereafter, he stated that the accused is residing in the same Vasti where the PW 2 is residing. On 16th February, 2010, PW 2 returned to his house at about 7 p.m. He heard shouts/cry from Sakharam's house. He saw that Suman is in burning condition. He further stated that Sakharabai Garje and Vishnu Kekan poured water on Suman's person and extinguished the fire. PW 2 Vishnu Garje called vehicle of one Anna Garje. Suman was taken in the vehicle to the Government Hospital, Nagar for treatment. On the way to hospital, Suman stated that her husband set her on fire. He has stated further details in his statement.

15. PW 5 Sainath Garje in his evidence before the Court has stated that his father i.e. Accused was addicted to liquor. Many times, he quarreled with his mother. At the relevant time, he received phone call from his maternal uncle Bapu Laad that accused set Suman on fire and thereafter, he proceeded to Nagar. Therefore, the statement of this witness also corroborates the version stated in the dying declaration.

16. The cause of death opined in the postmortem report is "death due to CRA due to Septicemia shock due to burns". It further appears that there was 93% burns. Dr. Ghule in his evidence before the Court has stated that he was on duty on 16th February, 2010 in the hospital as Casualty Medical Officer from 9 p.m. till 9.00 a.m. On that day at about 10.15 p.m. patient by name Suman Sakharam Garje was brought to the hospital. It was a burn case, she was admitted and intimation was given to the police choky. It appears that the medical papers were shown to him and he admitted his endorsement on the medical papers. He further stated that when the dying declaration was recorded by police constable at 3.30 a.m. on 17th February, 2010, he went to the Burns Ward to examine the patient and found that she was conscious and was in a position to give a

statement. He has identified the endorsement given to that effect and also his handwriting and signature thereon. He has denied every suggestion given by the defence that victim died due to accidental burns. Upon careful perusal of post-mortem report and evidence of the doctor, the defence of the accused that victim died of accidental death is completely ruled out. In case of accidental death, burning stove could have exploded into pieces. However, there is no recovery to that effect. There was no reason for the accused-appellant to run away from the spot. On the contrary, he should have attended his wife in case there was accidental burns. In his examination u/s. 313 of the Code of Criminal Procedure, while replying Question No. 6, accused stated that, he had quarrel with victim. Even at the time of answering Question No. 12, he did not refuse that he is addicted to liquor and used to quarrel and assault victim.

17. There is also report of Chemical Analyzer wherein it is stated that kerosene residue was found on the clothes of victim and articles. That also lends support to the prosecution case that Suman died due to burns. The conduct of the accused to leave house and even, not to attend funeral of the wife is also indicative of the fact that he has committed murder of his wife by pouring kerosene and setting her on fire. Death of Suman was unnatural. The possibility of accidental death is completely ruled out since there was no recovery of stove or explosion of stove. Possibility of suicide is completely ruled out. Therefore, death of victim was homicidal. The medical reports show that the victim died due to 93% burns.

13. Investigating Officer has stated in his evidence before the Court about the recovery from the spot of incident, recording of dying declarations and all other steps taken. His evidence is not shattered in the cross-examination.

18. The Medical Officer has also stated in his evidence that he has given endorsement on the dying declarations that patient was conscious and well oriented and in a position to give dying declaration. There is also another endorsement on the dying declaration at the end of the dying declaration. The contention of the Counsel for the accused that some other medical officer was In-charge of Burns Ward and therefore, evidence of medical officer Dr. Ghule cannot be accepted, deserves to be rejected. There is no requirement in law that only the In-charge of the Burns Ward should give the endorsement after examining the patient at the time of recording dying declaration.

19. Upon appreciation of the entire evidence on record, we find that the impugned judgment and order is in consonance with the evidence on record and therefore, needs no interference in the present appeal. In the result, appeal is dismissed.

We appreciate the sincere efforts taken by the learned Counsel (appointed) for the appellant. We quantify his fees at Rs. 5,000/-.