
(2004) 01 BOM CK 0085
In the Bombay High Court
Case No : Criminal Appeal No. 398 of 1999

Sanjay Gopinath Deshmukh	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 13-01-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2004) 01 BOM CK 0085

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

Bench : Division Bench

Advocate : Ganesh Gole, for the Appellant; Usha Kejriwal, AGP, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Palshikar, J.—Being aggrieved by the judgment and order dated 14.6.1999 passed in Sessions Case No. 44 of 1998 by the learned Sessions Judge, Raigad, Alibag convicting the appellant-accused u/s 302 of Indian Penal Code to suffer imprisonment for life for that offence the above appeal is preferred on the grounds mentioned in the memo of appeal as also verbally canvassed by the learned counsel appearing on behalf of the appellant.

2. With the assistance of the learned advocate and the learned public prosecutor we have scrutinized and reappreciated the evidence on record. The case of the prosecution as revealed by our reappreciation stated briefly is that :

on 20.4.1997 the accused went to the house of the victim as they were staying in the same vicinity around 1.00 pm. At that time the victim Jayshri was only person present in the house, her mother having gone out of the house. At that time, it is the case of the prosecution that Jayshri demanded sum of Rs. 300/- from accused as repayment of money advanced to him by mother of the victim. Enraged by this demand he accused sprinkled kerosene on the person of Jayshri, put her on fire, she started shouting, accused ran away. He was seen running

away by P.W.1-Shivaji Thokal who then arranged to douse the fire and took the victim Jayshri to the nearest hospital at Panvel, to be precise Panvel Municipal dispensary, where the victim was admitted as an indoor patient. Police was informed and statement of victim Jayshri was recorded by the police. Investigation was undertaken and thereafter on completion of the same the accused was arrested and was prosecuted as aforesaid. The prosecution has examined in all 11 witnesses to prove its case that it was the accused who has murdered the victim Jayshri burning her to death. The accused denied the charge, claimed to be tried and was accordingly tried as aforesaid. The learned trial Judge on appreciation of the evidence on record came to the conclusion of the guilt of the accused and consistent with that conclusion convicted him u/s 302 of IPC and sentenced him to suffer imprisonment for life. It is this order which is challenged in this appeal as aforesaid.

3. P.W.1-Shivaji Thokal is the person who was staying in the vicinity and on the fateful day around 1.00 p.m. saw the accused running away from the house of the victim Jayshri and heard cries of the victim. He immediately went to the house of the victim, saw her on fire, doused the fire and put her in autorickshaw, took her to dispensary where she was admitted as an indoor patient. This witness has also reported the matter to the police and in the witness box has identified the clothes of the victim. There is nothing in the cross examination of this witness which would require his testimony to be disbelieved.

4. P.W.2-Dr. Prasad Mhatre treated the accused for hand burns and had issued certificate to that effect. He has proved the certificate also. The evidence of this witness is inconsequential as it is not the case of the accused that he sustained those injuries while dousing the fire of the victim. The case of the accused is that he has been wrongly implicated in the case, the victim Jayshri as factually committed suicide. Therefore the entire testimony of this witness is inconsequential.

5. P.W.3-Shrikant Dharne who at the relevant time was a police sub-inspector in Panvel town police station and was on duty from 9.00 a.m. to 9.00 p.m. on 20.4.1997. Between 2.00 to 3.00 p.m. this witness received phone call from Panvel Municipal dispensary informing him about the burnt lady patient admitted in the hospital. He therefore went to the hospital, saw the patient, asked the doctor about condition of the patient and on being told that she is sound position to depose, proceeded to record the statement. He then states that during the recording of the statement by him except himself, doctor and police constable none else was present around the victim. He proves that statement as Ex.11. This therefore is the first recorded statement before the police made by the victim disclosing that she sustained burns at the hands of the accused. The witness then went to the scene of offence, drew panchnama of the spot, seized articles lying around which included bottle smelling of kerosene, match-box etc. The panchnama of these articles is Exh.12 duly proved by this witness. He has been cross examined but nothing is said by him in cross examination which

would require his deposition to be discarded. Ex.11 is thus duly proved and is on record. In this exhibit the victim has said with all clarity how she was burnt by the accused. She has stated that when she started shouting three persons came around, she names them as Shivaji Thokal, Chahu Mhaskar and his wife. She states that these people held her, extinguished the fire and when they came to her house the accused ran away. Apart from the fact that there is nothing to disbelieve the statement there is intrinsic corroborative statement available in the shape of deposition of P.W.1-Shivaji Thokal who states that when he started going to the house of the victim he saw the accused running away. This Ex.11 also bears a certificate of doctor stating that the victim was throughout deposition fully conscious.

6. There is evidence of P.W.4-Dattatray Patil who was at the relevant time functioning as Executive Magistrate, Panvel. He has been called by Panvel police for recording dying declaration of the victim Jayshri. He was called at about 4.00 p.m. in the Panvel Municipal dispensary by the police, He arrived there. He produced the original statement recorded by him in sealed condition in the open court and submitted that it is the statement recorded by him of the victim Jayshri. It was again signed by the doctor. He has categorically stated that throughout the recording of deposition the victim was conscious and in fit state of mind to give deposition. He thus proves it as Ex.15. It is recorded in question answer form, it is in the handwriting of the witness. It also bears the endorsement of the doctor that throughout recording of the deposition the witness was fully conscious. In this statement also the witness has categorically stated that she was put on fire by the accused. Ex.15 is therefore the second dying declaration by the victim. It is made in accordance with law and no fault can be found with that declaration. P.w.5-Bandu Deshmukh is the panch witness who witnessed the drawing of the panchnama of the spot. His testimony consequently is unimpeached on record. P.W.6-Dlnkar Patil is another panch who proves Ex.18 where under the condition of the dead body of Jayshri was noted. P.W.7-Manohar Mhaskar is yet another witness. He was witness to the search of the accused taken by the police after his arrest. P.W.S-Sharad Balid is yet another panch who witnessed the preparation of the panchnama of clothes of the accused. P.W.9-Sharad Patil is witness to the seizure of shirt belonging to the accused. P.W.10-Dr. Murlidhar Pawar is the person who examined the victim and who certified on two occasions that her statement was recorded in condition when she was fully conscious and in position to depose. He has identified the signatures on both the documents. He also conducted post mortem and has proved his report. He thus proves homicidal death of Jayshri and fact that she was conscious and in fit condition to depose when two statements were recorded one by police and another by the Magistrate. P.W. 11-Sayaji Dubal is the investigating officer who proves necessary documents.

7. It was on appreciation of this evidence that the learned trial Judge convicted the accused as aforesaid. Hence this appeal.

8. Shri Ganesh Gole, learned counsel appearing on behalf of the appellant-accused submitted that these dying declarations are stereo type. They do not inspire confidence. There is no motive for the accused to burn the victim. According to the learned counsel it is extremely improbable that a person would be so enraged by mere demand of return of loan as to put fire a young girl. It is his case that the victim committed suicide being frustrated by her broken engagement. She was also enraged by the illicit relations between her mother and the accused. The contention of Shri Gole is that the accused had illicit relations with the mother of the victim and therefore had no reason to burn the victim. There is total failure to prove any motives. The learned counsel then contended that the accused is being implicated in this case by the victim because she always frowned upon relationship that accused had with her mother. The learned public prosecutor countering this submission pointed out that there is no infirmity of any kind in the dying declaration. There is intrinsic evidence to prove that it is true. P.W.1-Shivaji Thokal corroborates the statement made in the dying declaration and there is therefore no error in the judgment impugned this appeal.

9. We have considered as aforesaid the evidence led by the prosecution. We have scrutinized, analyzed the dying declarations. Both declarations are recorded in proper form, both bear endorsements of the medical officer, who states in clear terms that while recording both the statements the victim was in state of sound position to answer the questions and was conscious and capable of giving replies. In the face of this evidence we see no reason to accept the contention of the learned counsel that it is the case of frame up. It is very unlikely that a victim would unnecessarily frame the accused if she was factually committing suicide. In our opinion, therefore, no error either of appreciation of evidence or of application of law is committed by learned trial Judge. In the result, appeal fails and is dismissed.