

(2016) 02 BOM CK 0062
In the Bombay High Court
Case No : Criminal Appeal No. 424 of 2013

Satish Shrikrishna Solanke

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 302

Citation : (2016) ALLMRCri 1209 : (2016) 3 BomCR(Cri) 443

Hon'ble Judges : B.P. Dharmadhikari; V.M. Deshpande, JJ.

Bench : Division Bench

Advocate : Shriniwas Deshpande, Advocate, for the Appellant; R.S. Nayak, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Deshpande, J. (Oral) - By the present appeal, the appellant is before this Court as he is aggrieved by the judgment and order of conviction passed by the Sessions Judge, Akola, in S.T. No. 84/10 on 20.5.2013. By the said judgment, though the learned Judge of the Court below acquitted the appellant of the offence punishable under Section 498-A of Indian Penal Code, found him guilty of the offence punishable under Section 302 of Indian Penal Code and directed the appellant to suffer imprisonment for life and to pay a fine of Rs. 2,000/-, in default to undergo simple imprisonment for six months.

2. Prosecution case, in brief, can be summarised as under :

(a) Deceased is Sunita. Her marriage with the appellant took place prior to three years of occurrence of burn. According to prosecution, on 16.3.2010 in between 7 to 7-30 p.m., the appellant under the influence of liquor picked up a quarrel with his wife, the deceased, poured kerosene on her person and set her ablaze. She suffered burn injuries. Initially she was taken to the hospital at Murtizapur from where she was shifted to General Hospital, Akola.

(b) Sanjay Gorkal (P.W.5) was serving as Naib Tahsildar. He was also invested with the powers of Executive Magistrate. On 17.3.2010 when he was in his office, one police constable came to his office in respect of recording of dying declaration of a woman who was admitted in General Hospital, Akola. Accordingly, he proceeded towards that hospital. He met there with the Medical officer Dr. Bhaskar Lokhande (P.W.3). Sanjay Gorkal (P.W.5) requested the medical officer to examine the patient Sunita as to whether she was in a condition to give her statement. Accordingly Dr. Bhaskar (P.W.3) examined Sunita in presence of P.W.5 Sanjay and gave his certificate to that effect which is at Ex.19-A.

(c) After certification from Dr. Bhaskar, Naib Tahsildar Sanjay (P.W.5) also got himself satisfied about the orientation of the patient. He thereafter asked the persons who were present in the said burn ward to leave that ward. Then he recorded statement of Sunita. Her statement is duly proved by him which is at Ex.39. In the said statement, Sunita has categorically stated that on 16.3.2010 in between 7 to 7-30 p.m., her husband the appellant picked up a quarrel with her under the influence of liquor, then dragged her inside the house, poured kerosene on her person and set her ablaze. P.W.5 Sanjay stated that after recording the statement of Sunita, same was read over to the declarant, who admitted the contents of the same as true. He thereafter obtained thumb impression of Sunita on the said statement which was duly certified by P.W.5 Sanjay.

After recording of the statement of Sunita, she was again examined by Dr. Bhaskar (P.W.3) and gave his certificate (Ex.19-B).

(d) The said statement of Sunita recorded by P.W.5 Sanjay was brought to Mana police station. At that time Namdeo Daberao (P.W.4) who was in-charge of the police station registered an offence against the appellant vide Crime No. 16/10. Printed FIR is at Ex.30.

(e) During the course of investigation, on 15.4.2010 the Investigating Officer arrested the accused under arrest panchanama (Ex.33). On the next day, the clothes of the accused which were on his person on the date of occurrence were also seized under seizure panchanama (Ex.34). After completion of investigation, the investigating officer presented challan before the Court of law.

3. The learned Magistrate, in whose Court the charge-sheet was presented, found that the offence was exclusively triable by the Court of Sessions and, therefore, he committed the case to the Court of Sessions by passing necessary order of committal and, as such, the case reached to the Court of Sessions which was registered as Sessions Case No. 84/10.

4. The learned trial Judge framed charge against the appellant for the offences punishable under Sections 498-A and 302 of Indian Penal Code. Charge was read over and explained to the accused, which he denied and claimed for trial. In order to bring home guilt, prosecution has examined in all 5 witnesses and also

relied upon proved documents. After a full-dress trial, the learned Judge of the trial Court upon appreciation of evidence and material available on record found that the prosecution has failed to prove the charge under Section 498-A of Indian Penal Code but held the charge under Section 302 of Indian Penal Code proved against the appellant and, therefore, he convicted him and sentenced him as stated in the foregoing paragraphs of this judgment.

5. We have heard Advocate Shriniwas Deshpande, learned counsel, appointed for the appellant and Shri Rajesh Naik, learned Additional Public Prosecutor for the respondent/State in extenso. With their able assistance we have gone through the record and proceedings of the Sessions case and also the notes of evidence.

6. The entire case of the prosecution rallies around three documents, (i) Ex.39 a dying declaration recorded by P.W.5 Sanjay Garkal, (ii) Ex.31- another dying declaration recorded by Namdeo Daberao (P.W.4) on 18.3.2010; and (iii) Ex.17- an intimation given by the Medical Officer of Burn Unit of General Hospital, Akola.

7. Learned counsel for the appellant has seriously assailed Ex.17 as well as Ex.31. The submission of the counsel in that behalf is that these documents cannot be relied upon.

8. In order to evaluate the submission, let us examine these two documents. Ex.17 is an intimation given to the police from Medical Officer, Burn Care Unit, Akola. It is dated 22.3.2010, i.e. prior to the death of Sunita. She died on 07.4.2010. This document is signed by Dr. Vinod Sharma (P.W.2). His evidence shows that Sunita was admitted in the hospital in a burnt condition by her relatives. That time he found that she was conscious. Upon being asked by him, she disclosed that she was set ablaze by her husband- the appellant. Ex.17 shows that he has noted down to that effect. However, the said document shows that the father of patient Sunita was present near her. Further, from the witness-box Dr. Vinod Sharma is silent that before asking the reason for burning with Sunita, he ensured that her close relatives are not with her.

9. In view of the same, the Court is in agreement with the learned counsel that such document should not be relied upon.

10. Insofar as Ex.31 is concerned, it is scribed by P.W.4 Namdeo Daberao, the Investigating Officer. It is dated 18.3.2010. The said statement was recorded by P.W.4 Namdeo during the course of investigation, since prior to that he had registered crime against the appellant.

11. Evidence of Daberao (P.W.4) would show that before recording the statement of Sunita he obtained certificate from the Doctor who was attending the patient in respect of her condition and her capacity to give her statement. His evidence would further disclose that the said Doctor gave opinion in the nature of certificate in respect of condition and thereafter the statement was recorded. Worth to note that the doctor who has given certificate is not examined by the prosecution. Therefore, the certificate which is appearing on Ex.31 has remained

to be proved. Merely because the certificate is not proved or the doctor is not examined, the dying declaration recorded by such scribe is not a waste piece of paper. However, for that the scribe must himself should be satisfied about the factum that the patient who is giving statement is fit to give such statement. The evidence of P.W.4 Daberao is totally silent that he himself was satisfied about the fitness and orientation of patient Sunita. He has relied upon the certificate given by the doctor and the said certificate has remained to be proved. In that view of the matter, the said document Ex.31 cannot be pressed into service while securing conviction of the appellant.

12. After rejection of these documents, the other dying declaration which is available on record is Ex.39. A solitary dying declaration is sufficient to secure conviction. However, the evidence of prosecution in behalf of such dying declaration should be very clear and the dying declaration should be free from all doubts and it should not be mist of any doubt. The dying declaration (Ex.39) is recorded by P.W.5 Sanjay Garkal. This witness has deposed that prior to recording the statement of patient, he had obtained certificate from Dr. Bhaskar. Dr. Bhaskar examined Sunita and gave certificate Ex.19-A. Even after obtaining such certificate, P.W.5 Sanjay Garkal, the author of Ex.39, on his own got satisfied about the condition of the patient. For that, his evidence would show that he was satisfied that Sunita was well oriented and conscious and able to give statement. From the evidence of P.W.5 Sanjay Garkal it is clear that before recording statement of Sunita he ensured that all her relatives are not near her and he asked them to leave the ward. There is nothing in the cross-examination of Sanjay Garkal to disbelieve this aspect. On the contrary, it is brought on record by way of cross-examination that 4-5 persons who were near the patient were asked by him to go out of the ward.

The dying declaration (Ex.39) shows that after recording the statement, it was read over to the declarant and thereafter her thumb impression was obtained. Not only that, her thumb impression is also duly certified by the scribe. There is no reason to disbelieve the said dying declaration. The said dying declaration is very clear. Sunita had pointed out that her husband is the author of the burn injuries which she had received. She has specifically stated that it was her husband who under the influence of liquor had poured kerosene on her person and had set her ablaze. We see no reason to disbelieve said clinching piece of evidence appearing in the prosecution case against the appellant.

13. Further during the course of investigation, panchanama of scene of occurrence was drawn by the Investigating Officer in presence of panch witness. During the course of trial this spot panchanama is admitted by the defence and accordingly it was duly exhibited. The said panchanama is at Ex.21.

14. As per dying declaration (Ex.39) the incident has occurred inside the house. Spot panchanama (Ex.21) shows that the spot of occurrence is the room in which appellant and deceased used to reside. Further, the said document shows that the roof of the room was blackened due to burning.

At the time of spot panchanama the Investigating Officer collected earth which was emitting smell of kerosene.

The seized articles, such as earth, the clothes of deceased and clothes of appellant were sent to chemical analyser by the Investigating Officer under requisition dated 01.7.2010 (Ex.35).

The chemical analyser's report is at Ex.37. The said report shows that the chemical analyser noticed kerosene residues on earth as well as the clothes of deceased.

Thus, there is due support from the scientific evidence to the dying declaration made by Sunita.

15. Learned counsel for the appellant has attacked prosecution case on the ground that the appellant was arrested on 15.4.2010 and his clothes were seized on 16.4.2010 and in spite of that report of chemical analyser (Ex.37) shows that there were kerosene residues on the clothes. It is well established that scientific evidence is always in the nature of corroboration and only on that basis the conviction cannot be secured. In the present case, even that part of Ex.37 is not considered. That does not make the case of prosecution untrustworthy.

16. From the evidence as it is brought on record, it becomes crystal clear that the dying declaration (Ex.39) shows overt-act on the part of the appellant and no circumstances are brought on record during the course of trial by the defence to show that there was any reason for the lady who was on the verge of her death to falsely implicate her husband. In that view of the matter, the appeal must fail and accordingly the appeal is dismissed. The judgment and order of conviction rendered by the Court below is hereby confirmed.

17. Advocate Shriniwas Deshpande who has provided legal aid to the appellant is entitled to receive Rs. 5000/- from the Legal Aid Committee towards his professional charges.