

(2000) 02 BOM CK 0077

In the Bombay High Court

Case No : Criminal Appeal No. 8 of 1996

Sham Madhavrao Rupvate

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 01-02-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 299, 300, 302, 304, 307

Citation : (2000) CriLJ 2389

Hon'ble Judges : Vishnu Sahai, J;Kakade, J

Bench : Division Bench

Advocate : D.M. Shah, for the Appellant; A.N. Shringarpure, Assistant Public Prosecutor, for the Respondent

Judgement

Vishnu Sahai, J.—The appellant aggrieved by the judgment and order dated 14-11-1995 passed by the Additional Sessions Judge, Nasik, in Sessions Case No. 109/95 convicting and sentencing him to undergo imprisonment for life for the offence u/s 302, I.P.C. has come up in appeal before us:

2. In, short prosecution case runs as under: The deceased Muktabai was the wife of appellant. She was married to him about 9 months prior to incident. Appellant under the influence of liquor used to beat and harass her. On 25-4-1995 at about 1 or 1.30 a.m. Pushpa Tadpade PW-6 a neighbour of Muktabai and appellant, heard cries of Muktabai on which she rushed to her house, followed by Mandabai Potinde PW-7 who was also Muktabai's neighbour. Pushpa Tadpade and Mandabai saw Muktabai, in a burnt condition. On seeing them Appellant ran away. Since Muktabai's sari was burnt Pushpa and Mandabai changed the same. On their asking Muktabai as to how she was burnt Muktabai replied that the appellant had poured kerosene on her and set her on fire. Shortly thereafter another neighbour Kantabai came. Kantabai's husband Madhav and one Shivaji brought Suresh Yadav PW-12 along with his rickshaw. On the rickshaw of Suresh Jadhav Muktabai was removed to Civil Hospital, Nasik, where she was admitted.

3. The evidence of Dr. Ravindra Ashtaputre PW-9 shows that on 25-4-1995 at

2.10 a.m. he admitted Muktabai as a burns case in Civil Hospital, Nasik and informed police. Thereafter immediately police came to hospital and told him that it wanted to record statement of Muktabai. Dr. Ravindra Ashtaputre examined Muktabai and issued a certificate that she was in a position to give her statement. Thereafter police havaldar Sudam Mahajan PW-3 of Bhadrakali Police Station recorded her statement, Exhibit 16, in the presence of Dr. Ravindra Ashtaputre.

A perusal of Exhibit 16, in short, shows that Muktabai stated that on 24-4-1995 at about 9 p.m. she cooked meals. Thereafter appellant took her to a jeweller for purchasing mangalsutra. After purchasing it they returned to house. She started making preparations to serve dinner. Appellant stated he would go out and consume liquor. Some time later he came in a drunken condition. She asked him whether she should serve him dinner. He asked her to take dinner for he wanted to take more liquor. When she started taking her dinner he questioned her how could she take before he had taken and poured kerosene oil on her and set her on fire.

4. The evidence of police havaldar Sudam Mahajan PW-3 shows that after recording FIR he went to Bhadrakali Police Station and sent a letter of request to Special Judicial Magistrate Jaiprakash Chavan PW-1 to record Muktabai's dying declaration. On receipt of said letter Jaiprakash Chavan came to Civil Hospital Nasik at about 5 a.m. and told Dr. Ravindra Ashtaputre that he wanted to record statement of Muktabai. Dr. Ravindra Ashtaputre medically examined her and issued a certificate which is on (exhibit 10) to the effect that she was in a fit condition to make statement. He thereafter recorded her dying declaration in question and answer form in Marathi. It is Exhibit 10 since question No. 3 and answer thereto is relevant for disposal of this appeal we are translating question No. 3 and answer to it in English.

Question No. 3 reads thus:

How you got burnt?

Answer : My husband consumes liquor and for the last fortnight he is continuously beating me. Last night he came after consuming liquor and quarrelled with me. He poured kerosene on my person and set me on fire.

In response to some other questions put by Special Judicial Magistrate Jaiprakash Chavan PW-1 she replied that she doused the flames and her husband ran away instead of dowsing them.

5. The evidence of P.S.I. Shantaram Borse PW-4 shows that on 25-4-1995 at about 7.5 a.m. on the basis of Muktabai's statement recorded by Special Judicial Magistrate Jaiprakash Chavan PW-1 he registered Crime No. 69/95 u/s 307, I.P.C.

6. The evidence of Pushpa Tadpade PW-6 shows that when on 25-4-1995 at about 7 p.m. she went to Civil Hospital Nasik, Muktabai told her that she was burnt by the appellant because he was annoyed by the fact that she had started

taking food first. Her evidence also shows that she succumbed to her injuries on 13-6-1995.

7. The autopsy on the corpse of Muktabai was conducted on 14-6-1995 by Dr. Ravindra Ashtaputre PW-8, who found on it 75% burns which were distributed as under:

The cause of death spelt out in the post mortem report is septicemia, due to 75% burns.

8. The investigation investigation was conducted in the usual manner by P.I. Anilkumar Jagtap PW-14 who after completing the same filed chargesheet against the appellant u/s 302, I.P.C.

The case was committed to Court of Session in due course manner where the appellant was charged for an offence punishable u/s 302, I.P.C, to which charge he pleaded not guilty and claimed to be tried.

9. During trial in all the prosecution examined 14 witnesses. We may straightway mention that there is no eye witnesses of the incident and the conviction of the appellant rests on dying declarations which can be categorized under three heads viz.

a) The statement of Muktabai (Exhibit 16) recorded by police havaladar Sudani Mahajan PW-3 on the basis of which FIR was registered;

b) The statement of Muktabai (Exhibit 10), recorded by Special Judicial Magistrate Jaiprakash Chavan PW-1; and

c) The oral dying declarations made by Muktabai to Pushpa Tadpade PW-6 and Mandabai Potinde PW-7.

The learned trial Judge believed the aforesaid dying declarations and convicted and sentenced the appellant in the manner stated in para 1. Hence this appeal.

10. We have heard learned counsel for the parties and perused the entire material on record. In our view this appeal deserves to be partly allowed. In our judgment the appellant is only guilty of an offence punishable u/s 304(ii), I.P.C. instead of one u/s 302, I.P.C.

11. So far as the involvement of the appellant in the incident is concerned the same in our view is squarely established by dying declarations of Muktabai, referred to above. As mentioned above dying declarations can be categorized under three heads viz.

a) The statement of Muktabai (Exhibit 16), recorded by police havaladar Sudani Mahajan PW-3 on basis of which FIR was registered;

b) The statement of Muktabai (Exhibit 10), recorded by Special Judicial Magistrate Jaiprakash Chavan PW-1; and

c) The oral dying declarations, made by Muktabai to Pushpa Tadpade PW-6 and Mandabai Potinde PW-7.

11-A. We now propose to examine each of said dying declarations.

We begin with the FIR. The evidence of Dr. Ravindra Ashtaputre PW-9 shows that on 25-4-1995 at 2.10 a.m. he admitted Muktabai in hospital and since it was a medico legal case he immediately informed police. Thereafter police came to hospital. The evidence of police havaladar Sudam Mahajan PW-3 shows that on the night of 24-5-1995 and 25-5-1995 while he was posted at Mahatma Phule Out Post, under Bhadrakali Police Station, he was asked to record Muktabai's statement. Consequently he went to Civil Hospital, Nasik where she was admitted and after obtaining certificate from Dr. Ravindra Ashtaputre that she was in a fit condition to make a statement he recorded her statement, (Exhibit 16), in the presence of Dr. Ravindra Ashtaputre. We have referred to contents of Exhibit 16 in paragraph 2. In short she stated therein that on 24-4-1995 at about 9 p.m. she cooked meals. Thereafter Appellant took her to a jeweller for purchasing mangalsutra. After purchasing it they returned to house. She started making preparations to serve dinner. Appellant stated he would go out and consume liquor. Some time later he came in a drunken condition. She asked him whether she should serve him dinner. He asked her to take dinner for he wanted to take more liquor. When she started taking her dinner he questioned her how could she take before he had taken and poured kerosene oil on her and set her on fire.

12. We have gone through the evidence of Dr. Ravindra Ashtaputre and police havaladar Sudam Mahajan and we find that it inspires implicit confidence. Although they were cross examined at length but nothing could be elicited therefrom which would render their veracity, suspect. It is pertinent to mention that both of them were independent witnesses who had no rancor or ill-will against the appellant.

13. In our view the said statement inspires confidence and has been rightly accepted by the trial Court.

14. We now come to Muktabai's statement recorded by Special Judicial Magistrate Jaiprakash Chavan PW-1. The evidence of Dr. Ravindra Ashtaputre shows that at about 5 a.m. on 25-4-1995 Special Judicial Magistrate Jaiprakash Chavan PW-1 came to him and said he wanted to record dying declaration of Muktabai. Consequently he examined her and vide endorsement. On Exhibit 10 found her in a fit condition to give her statement. Thereafter Jaiprakash Chavan recorded her statement.

14-A. We have earlier referred to the recitals contained in the said statement which is in question and answer form. The crucial question is question No. 3. Consequently we are extracting it and the answer to it. Question No. 3 reads thus:

How you got burnt?

Answer: My husband consumes liquor and for the last fortnight he is continuously beating me. Last night he came after consuming liquor and quarreled with me. He poured kerosene on my person and set me on fire.

14-B. We have gone through the said statement and find it inspires confidence. Its perusal shows that it contains the doctor's endorsement to the effect that she was in a position to make it.

14-C. It is pertinent to mention that both Special Judicial Magistrate Jaiprakash Chavan PW-1 and Dr. Ravindra Ashtaputre had no rancour or ill-will against the appellant and in our view unless Muktabai would have made a statement incriminating the Appellant they would not have falsely deposed about it. Again it is relevant to mention that although they were extensively cross examined but nothing could be extracted therefrom which would render the veracity of said statement suspect.

In our view the learned trial Judge acted correctly in accepting it.

15. We also find that the evidence of oral dying declarations inspires confidence. As mentioned earlier there are two witnesses to prove it viz. Pushpa Tadpade PW-6 and Mandabai Potinde PW-7. Both of them were neighbours of Muktabai. Their evidence shows that on the date of the incident at about 1 a.m. they heard cries of Muktabai and went to her house and she told them that the appellant had burnt her. Their evidence further shows that on seeing them the appellant ran away.

16. The evidence of Pushpa Tadpade PW-6 further shows that when at about 7 p.m. on 25-4-1995 she visited Muktabai for a second time in hospital Muktabai told her that the appellant had set her on fire because he was annoyed with her conduct of eating food first.

17. It is pertinent to mention that since Pushpa Tadpade PW-6 and Mandabai Potinde PW-7 were neighbours of Muktabai their presence on the place of the incident was natural and they on hearing Muktabai's cries could have reached in time to see her in a burnt condition. Again on seeing her in such a condition it was natural for them to have asked her who burnt her. It is relevant to point out that these witnesses are independent witnesses who had no rancor or ill-will against the appellant. In our view, their evidence and the evidence of oral dying declarations deposed to by them inspires confidence.

18. For the said reasons we feel that the trial Court was justified in placing reliance on dying declarations and finding involvement of the appellant in the incident established beyond the pale of all doubt.

We however, make no bones in observing that the learned trial judge erred in convicting the appellant for offence u/s 302, I.P.C. The statement of Muktabai recorded by police havaldar Sudam Mahajan PW-3 and oral dying declaration

made by Muktabai to Pushpa Tadpade PW-6 on 25-4-1995 at about 7 p.m. clearly show that the appellant got enraged by Muktabai's act of eating first and hence set her on fire. A perusal of the post mortem report, which has been proved by Dr. Ravindra Ashtaputre shows that Muktabai did not die directly as a consequence of her burns but died due to septicemia due to 75% burns which she had sustained. The evidence of Pushpa Tadpade PW-6 shows Muktabai died more than 1 1/2 months after the incident viz, on 13-6-1995.

It is in the aforesaid background that we have to examine the circumstance that Dr. Ravindra Ashtaputre who performed the autopsy did not state in his deposition in the trial Court that Muktabai's injuries were sufficient in the ordinary course of nature to cause death. Since there is no evidence to the effect that her injuries were sufficient in the ordinary course of nature to cause death, clause thirdly of Section 300, I.P.C. would be inapplicable. In our view the other three clauses of Section 300, I.P.C. would also be inapplicable.

But all the same it can be safely presumed that when in the aforesaid background that appellant poured kerosene oil on deceased Muktabai and set her on fire he committed an act with the knowledge that he was likely to cause her death, in terms of clause thirdly of Section 299, I.P.C. the breach of which is punishable u/s 304(ii), I.P.C.

We accordingly hold that the appellant is guilty of an offence punishable u/s 304(ii), I.P.C.

19. The only question which remains is the quantum of sentence to be awarded to the appellant for the offence u/s 304(ii), I.P.C. We have given our anxious consideration to it and in our view, the ends of justice would be squarely satisfied if the appellant is directed to suffer a sentence of 7 years R.I., thereunder.

20. In the result this appeal is partly allowed. Although we acquit the appellant for the offence u/s 302, I.P.C. and set aside his conviction and sentence thereunder but we find him guilty for the offence u/s 304(ii), I.P.C. and sentence him to undergo seven years R.I. thereunder.

The appellant is in jail and shall serve out his sentence.