
(2004) 02 BOM CK 0007
In the Bombay High Court
Case No : Criminal Appeal No. 98 of 2000

Shankar Keshav Madane

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-02-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2004) 2 DMC 200

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

Bench : Division Bench

Advocate : Shekhar Ingawale, for the Appellant; P.H. Kantharia, APP, for the Respondent

Final Decision : Allowed

Judgement

V.G. Palshikar, J.—Being aggrieved by the judgment and order of conviction and sentence passed on 12.1.2000 by Additional Sessions Judge, Islampur in Sess. Case No. 130/99 the appellant named above has preferred this appeal on the grounds mentioned in the memo of appeal and as verbally canvassed by the learned Advocate appearing on behalf of the appellant before us.

2. With the assistance of the learned Counsel for the defence and the prosecution we have scrutinized the record and reappreciated the evidence.

3. The prosecution story on reappreciation of evidence on record stated briefly is that the accused and his wife were married and they had three issues borne out of the wedlock. There used to be frequent quarrels between the man and the wife. On 26.3.1998 in the night at about 8.30 the victim was preparing food and was burnt. She was admitted to hospital where two dying declarations of the victim were recorded by the Special Executive Magistrate. Accepting one dying declaration the learned trial Judge has convicted the accused-appellant as aforesaid. That order is challenged before us.

4. Mr. Shekhar Ingawale, Advocate was appointed to conduct the appeal before

us as the appellant-accused is pauper. Mr. Ingawale, learned Advocate for the appellant, submitted that there are two dying declarations on record being Exhibits 19 and 21. According to the learned Advocate these two dying declarations cannot co-exist in Exhibit 19. The victim who was certified to be fully conscious and in position to make statement has categorically said that on that day while she was cooking on stove the stove burst and she was wearing terry cot Sari because of which entire body was in flames. She cried, her husband came towards her poured water on her. She then states that her husband, Sarpanch and Police Patil admitted her to the hospital. In this dying declaration she has stated that :

"I gave the statement in full conscious and willingly. Husband is doing agriculture work. When I fire the stove due to burst of stove Sari was burnt. I do not complain against any other. The statement was loudly read over to me. It is known to me and correct. When I gave the statement Dr. .D.V. Mane was present there."

Certificate is signed by Dr. Mane. It is signed by the Special Executive Magistrate. Mr. Ingawale then pointed out Ex. 21 which is second dying declaration in which she takes a completely opposite stand and says that she was burnt by the husband. She did not speak the truth earlier when the first statement was recorded because her husband had threatened to kill the children.

5. According to Mr. Ingawale the second dying declaration has been recorded after the victim met her brother, mother and other relations. Special Executive Magistrate was required to record the second dying declaration because of pressure brought about by Mahila Mandal and ether relations of the victim and, therefore, according to Mr. Ingawale in the case of such two dying declaration conviction is not possible. These dying declarations create reasonable doubt in the minds of ordinary prudent man that may be what she said first is the truth or may be that what she said afterwards is the truth. Benefit of doubt of such situation should go to the accused, submitted Mr. Ingawale.

6. The Special Executive Magistrate who recorded both the dying declarations is one Rajaram Potdar. He is examined as P.W. 4 and he has categorically stated in his statement that when the first statement Ex. 19 Was recorded the patient was in conscious condition to give that declaration and she had categorically said that she burnt accidentally by burst of stove. He makes similar statement regarding Ex 21. Therefore, according to this witness the victim was conscious on both the occasions, was able to give statement on both occasions, was certified to be in such condition by doctor on both the occasions and, therefore, the possibility of her changing the statement after meeting the relations cannot be overruled and benefit of such situation should also go to the accused.

7. Mr. Ingawale relied upon a judgment of the Supreme Court in the case of Smt. Kamla Vs. State of Punjab, , wherein the Supreme Court observed as under:

"Therefore, his evidence cannot simply be brushed aside on the ground that he

might have given such a version to save his parents and his evidence further shows that the occurrence could be due to accident.

Held, under these circumstances, the irresistible conclusion is that the dying declarations are inconsistent and in such a situation it is not possible to pick out one statement wherein the accused is implicated and base the conviction on the sole basis of such a dying declaration."

Therefore, relying upon the judgment quoted above Mr. Ingawale argued that in this case also there are two dying declarations and a statement is made by the wife that the husband tried to extinguished the fire.

8. It is relevant to be noted that in the second dying declarations it is clearly stated by the victim that when she opened the door and came out of the house the accused threw water on her body and extinguished the fire. Taking into consideration the dicta of the Supreme Court and the facts present in this case which are duly reappreciated we are firmly of the opinion that the order of conviction cannot be sustained. Reasonable doubt arises benefit of which must go to the accused. In the result, therefore, appeal succeeds and is allowed. Accused-appellant is acquitted of the charge levelled against him u/s 302 of I.P.C. The order of conviction is set aside. Accused-appellant be set at liberty forthwith if not required otherwise. Fees of the learned Advocate for the appellant-accused quantified at Rs. 500/-.