
(2011) 09 BOM CK 0102
In the Bombay High Court
Case No : Criminal Appeal No. 1481 of 2004

Shivu Chandram Loni

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

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

Citation : (2012) BomCR(Cri) 158

Hon'ble Judges : D.D. Sinha, J;A.R. Joshi, J

Bench : Division Bench

Advocate : Amit Sale, for the Appellant; U.V. Kejriwal, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Joshi, J.—Present sole Appellant-accused was convicted by III Additional Sessions Judge, Sangli by judgment and order on 8th October, 2004 in Sessions Case No. 78 of 2003.

2. The Appellant-accused was convicted for the offence punishable u/s 302 of I.P.C. and was sentenced to suffer imprisonment for life and to pay a fine of Rs. 500/- in default to suffer rigorous imprisonment (R.I.) for six months. Being aggrieved by the said judgment and order of conviction the accused has preferred present appeal.

3. Rival submissions are heard at length. Perused the notes of evidence. Also perused the reasoning given by learned Additional Sessions Judge while convicting the accused for the offence punishable u/s 302 of I.P.C.

4. In order to appreciate the rival submissions and mainly the defence raised on behalf of the Appellant-accused, the case of the prosecution is narrated, as under:

5. The accused is a married person, having his family and children, residing in

the vicinity of one Ramanna PW-1. Said Ramanna is father of the deceased Shakuntala. Said Shakuntala was earlier married with one Bhimraya Birajdar of Samnal, taluka Shindagi. Within few days of marriage there was matrimonial dispute and Shakuntala left her husband's place and came to her parents at Umadi, taluka Jat, District Sangli. Since five to six months prior to fateful incident which occurred on 10th December, 2002, Shakuntala was residing separately in one rented room at Umadi. When Shakuntala deserted her husband and came to her parents for shelter, present Appellant-accused, being a resident of neighbourhood, was frequently visiting the house of her parents and as such got acquainted with Shakuntala. Shakuntala and the Appellant-accused developed love affair and also developed illicit relations between them. In due course of time, the Appellant-accused had reduced his visits to Shakuntala's house. However, continued his illicit relations. At the relevant time of the incident, there was a sort of quarrel between Shakuntala and Appellant-accused on the count that the Appellant-accused was showing disinterest in her and was neglecting to maintain her. On the fateful day of 10th December, 2002 at about 2:00 p.m. there was some altercation between Shakuntala and the Appellant. She demanded that the Appellant should maintain her as his wife, as she had already deserted her husband. The Appellant was reluctant to continue the said relations since he was a married person and it was not possible for him to maintain Shakuntala as his wife. That time Shakuntala demanded Rs. 5000/- back from him, which she had given as loan to the Appellant. At that time, the Appellant was under the influence of liquor. On the same evening at about 7:00 p.m. the incident of burning occurred. That time the Appellant accused poured kerosene on the person of Shakuntala and set her on fire. The clothes of Shakuntala caught fire and as such in order to save herself, she poured water on her person. After the incident of setting Shakuntala on fire, the accused left the place and ran towards his nearby house. While Shakuntala was on fire and sustained burn injuries on her stomach, hands, thighs, etc. she ran towards the house of the accused and informed the incident to the family members of the Appellant, but they did not listen to her. On the contrary, they abused her. Thereafter, Shakuntala covered her body by means of some cloth (Lungi) and reached Primary Health Centre, Umadi for treatment. She reached there at about 9:00 p.m. She was initially treated by PW-3 Dr Sandeep. She gave history and informed that her husband - accused set her on fire at about 7:00 p.m. on that day. Said history was written down by attending doctor in the case paper.

6. Dr Sandeep informed the police and accordingly PW-2 A.S.I. Appasaheb Pawar, (Umadi Police Station), reached Primary Health Centre and recorded the statement of then injured Shakuntala after obtaining the opinion of the attending doctor as to the condition of Shakuntala, whether fit for giving statement. Said statement was treated as F.I.R and C.R. No. 57 of 2002 was registered against the Appellant-accused for the offence u/s 307 of I.P.C.

7. While under treatment at Primary Health Centre, Umadi sensing the seriousness of the injuries and sensing lack of sufficient medical treatment

facilities at Primary Health Centre, Umadi, Shakuntala was referred to Civil Hospital Solapur. Immediately on the same night she was brought to Civil Hospital, Solapur, however, while under treatment Shakuntala succumbed to the burn injuries on the next day i.e. on 11th December, 2002. On the death of Shakuntala an offence punishable u/s 302 of I.P.C. was inserted in the charge-sheet against the accused. Investigation was taken over by PW4 A.P.I. Nandkumar Gadade.

8. During investigation, scene of offence panchnama Exh.27 was drawn on 11th December, 2002 in the morning. In the afternoon after the death of Shakuntala, inquest panchnama was drawn at Civil Hospital, Solapur. It is at Exh.29. Dead body of Shakuntala was sent for postmortem. Postmortem was performed by one Dr. Chanchure and Dr Sardar at Civil Hospital, Solapur. They gave certificate as to cause of death. It is at Exh. 16. At this juncture, it is mentioned that postmortem report is not produced before the Court during the trial. Statements of PW 1 Ramanna, father of the deceased, and one Sulochana Teli were recorded. On completion of investigation, charge-sheet was filed and matter was committed to the Court of Session and which has resulted in conviction of the Appellant-accused.

9. Certain admitted factual position is narrated herein in order to have proper perspective of the matter while appreciating the defence of the accused.

i) Victim Shakuntala died of burn injuries on 11.12.2002 in the afternoon at Civil Hospital Solapur. Prior to that she was examined on the night when she got herself admitted at Primary Health Centre, Umadi.

ii) Smt. Shakuntala was earlier married, however, she had deserted her husband and started living with her parents and subsequently started residing in the room, hired by the accused for her, which was located near the house of the accused.

iii) Smt. Shakuntala had illicit relations with the Appellant-accused, though he was a married person and having children.

iv) The scene of offence panchnama show the spot of incident i.e. pouring kerosene on the person of Shakuntala and setting her ablaze which is at a distance of about seven feet from hut of the Appellant-accused. Traces of kerosene were found from the said spot.

v) Spot panchnama (Exh.27), inquest panchnama (Exh.29) and cause of death certificate (Exh.16) are the documents, admitted by the accused during the trial.

vi) The statement - dying declaration of deceased Shakuntala recorded by PW-2 ASI Appasaheb Pawar at Primary Health Centre, Umadi was treated as F.I.R.(Exh. 15) and initially offence was registered against the Appellant -accused as his name was specifically mentioned in the dying declaration and said offence was punishable u/s 307 of the Indian Penal Code, which was subsequently changed to Section 302 after the death of Shakuntala.

10. Bearing in mind the above admitted position, the substantive evidence of prosecution witnesses is required to be scrutinized in order to ascertain the trustworthiness of the case of the prosecution as to charge leveled against the Appellant-accused for the offence punishable u/s 302 of I.P.C.

11. During the trial, four witnesses were examined. PW 1 is one Ramanna - father of the deceased Shakuntala. PW-2 ASI Appasaheb Pawar, who went to Primary Health Centre Umadi and recorded dying declaration Exh.15 of Smt Shakuntala, after obtaining the opinion of attending doctor PW-3, regarding condition of the patient for giving statement. PW-3 is Dr Sandeep who examined the patient when she herself got admitted in Primary Health Centre and also gave history that her husband set her on fire. PW-4 is the last prosecution witness, Investigating Officer one Nandkumar Gadade.

12. During the arguments, the learned Counsel for the Appellant-accused submitted the points of defence as under:

i) There is a doubt about the place of the occurrence.

ii) There is possibility that Shakuntala might have committed suicide by pouring kerosene over her person on the count of the dispute with the accused.

iii) Substantive evidence of PW 1 Ramanna cannot be accepted so far as alleged dying declaration made before him inasmuch as mentioning of the name of the accused by Shakuntala to PW 1, while under treatment, is an omission, so also it is an omission as to deceased Shakuntala telling him as to the accused was not ready to maintain her as his wife.

iv) The entire story of the prosecution is doubtful inasmuch as there is No. explanation forthcoming from the prosecution regarding time gap of two hours when allegedly the incident occurred at 7:00 p.m. when Shakuntala sustained severe burn injuries but she rushed to the Primary Health Centre Umadi only at 9:00 p.m. and as such it is mystery as to what Shakuntala was doing for about 2 hours in severely burnt condition and how she reached Primary Health Centre alone without informing the incident to anybody or even to her father or her other relatives.

13. By referring the above points of defence, it is further submitted on behalf of the Appellant-accused that the substantive evidence of PW-1 Ramanna is not trustworthy considering the omissions mentioned above and in that event there remains only the F.I.R. i.e. alleged dying declaration (Exh.15), allegedly given by deceased Shakuntala to the police officer PW-2. It is further submitted that in the said dying declaration victim Shakuntala has given the place of offence i.e. the house of her father PW-1 where she was staying. Therefore, considering all this, the story of the prosecution that the Appellant-accused set Smt Shakuntala on fire is required to be discarded. It is further argued that the scene of offence panchnama (Exh.27) shows that the place of offence is near the house of the accused at a distance of about 7 feet. It is further submitted that the story of the

prosecution is doubtful inasmuch as the place of offence is concerned. The authorities cited before us on behalf of the Appellant-accused are as under:

(I) State of U.P. Vs. Madan Mohan and Others, .

(II) State of Maharashtra Vs. Uttam Karbhari Dhage and another,

(III) State of Rajasthan Vs. Yusuf, .

14. We have carefully gone through the facts of the authorities cited before us. In the first authority, the facts were rather different, where the Apex Court has held that there was No. explanation by the prosecution regarding the injuries on the person of one of the accused and the prosecution version about the occurrence was differing from the version in the dying declaration. Moreover, the names of eye-witnesses and some of the accused were not mentioned in the dying declaration. Under those circumstances, the acquittal was up held in the said matter.

15. In the second authority, the facts were such that the victim was narrating the incident to the ladies who had surrounded her and victim narrated them that her husband had burnt her by pouring kerosene oil. In that matter, those ladies were not examined by the prosecution. Moreover, in that matter there were multiple dying declarations and there was variance in the contents of said dying declarations and this was held by the High Court as a circumstance against the prosecution and as such said dying declarations were not accepted.

16. In the third authority mentioned above, there was material before the Court to entertain a doubt that it was an inherent attempt on the part of the victim to falsely implicate the accused and this opinion was founded on the various statements in the dying declaration and such statements were held to be false. In our opinion, acceptability or otherwise of the dying declaration in any given case depends on facts of that case. Authenticity of the dying declaration in the present is required to be considered on the basis of the facts and circumstances involved in the present case as well as the evidence adduced by the prosecution in this regard.

17. On the aspect of the dying declaration, substantive evidence of PWs 2 and 3 is carefully examined. According to PW-3 Dr Sandeep while he was present at Primary Health Centre Umadi, Taluka Jat on the relevant night at about 9:00 p.m. victim Shakuntala got herself admitted for burn injuries and she gave history as to how she sustained burn injuries. Said history was written down by PW-3 in the case papers. When PW-3 examined the victim she was conscious and her pulse was 180 per minute and blood pressure 100x64 mmhg, speech was normal, eyes were normal and reacting to light. On local examination, PW-3 found deep burns on thighs, buttocks, arms and forearms and he diagnosed that there was superficial and deep burns extending up to 60%. While victim was under treatment at about 9-15 p.m. police asked him whether the said patient was in fit condition to give statement. On this Dr PW-3 examined the patient and

opined that she was in good condition to give statement, and she was conscious and oriented to time, place, and person, and her speech was normal. Accordingly, PW-3 made an entry being Exh.22. Thereafter, the statement was recorded by the Police Officer PW-2 Appasaheb. The substantive evidence of PW-2, corroborates the evidence of PW-3 Dr Sandeep, inasmuch as ascertaining the condition of the victim, fit for giving statement and endorsement made by attending doctor PW-3. Though both the said witnesses were cross-examined and suggestions were given as to fabrication of said dying declaration, nothing could be extracted from them in their cross-examination which will favour the defence. It appears that during the cross-examination of PW-2, police officer, it was brought on record that from the house of the accused, if one has to reach the Primary Health Centre, Umadi, he has to go from the area where the police station was situated. It is strongly argued on behalf of the Appellant that it was unnatural for the victim first to go to the hospital instead of going to the police station, which was on the way to the hospital. On this aspect, considering that the father of the victim had severed his relation with her and considering that she was alone on that night and nobody came for her help when she was abused by the family members of the accused after the incident in question, her conduct of going to the Primary Health Centre, Umadi instead of lodging the complaint cannot be taken as circumstance so unnatural to discard the story of the prosecution. In other words, how a person will react in a particular situation cannot be predicted. Considering the circumstances under which the victim was set on fire, her conduct cannot be doubted and consequently in our opinion the contents of the dying declaration Exh.15 are relevant and there is ample corroboration to the said contents by substantive evidence of PWs-2 and 3.

18. Now coming to the first point raised on behalf of the Appellant as to reasonable doubt regarding the place of occurrence, it must be said that though there is some variance in the substantive evidence of PW-1 father of the victim and the contents of the dying declaration (Exh.15), in the evidence of PW-1 it has come that he had severed his relations with the victim, his own daughter, because of her illicit relations with the accused. Moreover, the contents of spot panchnama (Exh.27) are admitted by the accused, on the spot traces of kerosene were found and the said place was near the house of the accused at a distance of about seven feet. Apparently, from the contents of dying declaration and evidence of PW-1, it must be accepted that victim was residing with the accused who had given her a separate hut for staying. As such, considering the effect of the evidence of PW-1 and the contents of dying declaration (Exh.15) in totality, some of the answers given by PW-1 during his cross-examination as to distance between the house of the accused and the house of PW-1, is not of much significance. On this count, in our view, defence of the accused cannot be accepted.

19. The learned A.P.P. submitted that the substantive evidence of PWs 2 and 3 is sufficient enough to accept the dying declaration (Exh.15) though there is certain discrepancy regarding exact spot of offence. On this point, the following

authority cited before us on behalf of the State:

Vajrala Paripunachary Vs. State of Andhra Pradesh, . 20. Considering the facts of the present matter, as mentioned earlier, in our view, the alleged discrepancy as to the spot of offence neither affect the credibility of dying declaration, nor identity of the accused.

21. Coming to the second argument as to the victim Shakuntala committing suicide by pouring kerosene over her person has been completely ruled out by the cogent evidence adduced by the prosecution which clearly proves the prosecution case that the Appellant-accused poured kerosene on the person of Shakuntala and set her on fire. The defence raised by the accused in the light of the substantive evidence of the prosecution is improbable. It is pertinent to note that during the recording of the statement of the Appellant u/s 313 of Code of Criminal Procedure he did not take such defence. The Appellant has given written submissions in which he has disclosed about his defence. We do not find any merit in the said defence, considering the circumstances proved by the prosecution beyond all reasonable doubt. Prosecution also proved that Shakuntala gave five thousand rupees to the accused which she was demanding back, however, the accused refused to oblige her and, therefore, there was motive for the Appellant-accused to do away with Shakuntala, apart from the fact that he did not want to maintain her as his wife.

22. Third defence raised by the accused is also without substance and, therefore, is misconceived and cannot be accepted.

23. For the reasons stated herein above, there is No. merit in the present appeal. Same is accordingly disposed of with the following order.

ORDER

Criminal Appeal No. 1481 of 2004 stands dismissed.