

(2010) 10 BOM CK 0110
In the Bombay High Court
Case No : Criminal Appeal No. 253 of 2005

Shri Tanaji Bajirao Chawan, through Kolhapur Central Prison	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 498A, 504

Citation : (2010) 10 BOM CK 0110

Hon'ble Judges : D.D. Sinha, J; A.P. Bhangale, J

Bench : Division Bench

Advocate : D.G. Khamkar, for the Appellant; A.S. Pai, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—Present Criminal Appeal arose out of judgment and order dated 07/10/2003 passed by learned VIth Additional Sessions Judge, Satara, who found the appellant guilty of the offence punishable u/s 302 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for life and to pay fine in the sum of Rs. 500/- in default to suffer further rigorous imprisonment for five months. The appellant was further found guilty of the offence punishable u/s 498A of the Indian Penal Code, the appellant was sentenced to suffer S.I. for 3 years and to pay fine in the sum of Rs. 400/- in default to suffer further S. I. for four months. The appellant was also found guilty of the offence punishable u/s 504 of IPC and sentenced to suffer R.I. for one year and to pay fine in the sum of Rs. 200/- in default to undergo R. I. for two months.

2. The case of the prosecution briefly stated is as under:

Sau Lata @ Ranjana Tanaji Chawan, resident of Kalewadi (Sartale) Tauka-Jaoli, District-Satara (deceased) was wife of the appellant. They were married on 03/07/1994. They had two sons -Nitiraj & Rajiv out of the wedlock. The appellant is truck driver by occupation. Lata died at Civil Hospital, Satara due to septicemia

due to 76% burns. Madhukar Pawar (father of the deceased) had died about 9 months prior to the date of the incident. It is case of the prosecution that the deceased Lata was ill-treated by the appellant on the ground that she should get transferred her share in her father's property in his name in respect of the agricultural land belonging to her father but she was not ready because the appellant was addicted to liquor and to satisfy his lust, he was likely to sell the land. As Lata had refused, the appellant started harassing her by abusing and assaulting her. On 01/05/2002 at about 11 a.m., the appellant had brought dry wood and had asked Lata to prepare egg curry. While Lata was cutting onion for that purpose, the appellant started abusing her on the ground that she was not getting her share transferred in his name. The appellant threatened to kill her and abused. He removed the lid of the bottle containing kerosene and spread it on her person and set her on fire with the help of lighted matchstick, due to which Lata's saree started burning. The appellant then pushed her to Padvī of the house. Lata shouted. The relatives i.e brother of the appellant and his wife, who were nearby, had rushed to the scene. The appellant had poured water on the person of Lata and extinguished the fire. Then the appellant with the help of his brother Shivaji, his wife Mangal had brought Lata to Civil Hospital Satara at about 3.05 p.m. It is case of the prosecution that while Lata was brought by the rickshaw, the appellant had insisted and influenced Lata to tell falsely that she had caught fire due to flickering of the stove accidentally and threatened her that otherwise he will kill her brother and her mother.

3. On 03/05/2002 A.S. I. Narendra Shankar Jagtap (PW-7) who went to Civil hospital, Satara had recorded the statement of Lata at Exh.37 in presence of Dr.Ravindra Ghongade (PW-9) and had registered the offence as C.R. No. 25 of 2002 at Kudal police station. During the investigation the panchnama regarding the scene of offence was drawn, burnt pieces of clothes and one stove was seized. Statement of witnesses were recorded. On 07/05/2002 a requisition letter was sent to Special Judicial Magistrate Sanjay Anant Mulik (PW-1) to record dying declaration of Lata, which was recorded on the same day between 10.40 p.m. to 11.40 p.m. by PW-1 in presence of Dr.Anil Shinde (PW-10). Ultimately Lata had succumbed to her burn injuries. Her dead body was referred for the postmortem examination and memorandum of postmortem (Exh.17) was issued. In the course of investigation, the glass bottle and a match stick were recovered at the instance of the accused (appellant).

4. Upon completion of investigation, on 22/08/2002 the accused was charge sheeted before the learned Judicial Magistrate, First Class at Medha. On 26/08/2002 the case was committed to the Court of Sessions, Satara.

5. The charge below Exh.10 was framed on 21/06/2003. The appellant/accused pleaded not guilty and claimed trial. Accordingly plea of the accused was recorded below Exh.11.

6. The prosecution examined ten witnesses and closed evidence in the trial Court. The defence evidence of two witnesses was led by the accused.

7. We have heard learned advocate for the appellant and learned A.P.P. for the State.

8. The inquest panchnama (Exh.15) and post-mortem notes were admitted by the defence and were exhibited. Medical officer Dr.S. Kasar who had conducted postmortem examination of the dead body of the victim Lata (Exh.17), found 76% antemortem burn injuries and opined that the deceased died due to septicaemia due to 76% burns.

9. PW-1 Sanjay Mulik, a Special Judicial Magistrate was requisitioned by the police to visit Civil Hospital, Satara and to record dying declaration. He met Dr. Shinde - Medical officer, and inquired as to whether Lata was conscious. Medical officer certified that she was conscious and well oriented to give her statement under the endorsement Exh.24. Then PW-1 proceeded to record the dying declaration (Exh.25), put her some questions and after answers assessing her fitness, recorded dying declaration as per her version. After the statement was read over to her she had affixed her signature below the statement. PW-1 also affixed his signature (vide Exh.25). Lata emphasized that her first dying declaration was given due to threat given by her husband Tanaji who had carried her by the rickshaw and who insisted upon her to state falsely that she received burns accidentally due to flickering of the flames of the stove and had threatened her that otherwise he will kill her brother and others from her parental family. According to her, her husband had brought domestic firewood which was kept arranged on the loft inside the house. Then her husband asked her to prepare eggs-curry. She had cut the onion for that purpose. At that time her husband started abusing her for her failure despite telling her repeatedly to get the land of her share from her father's property transferred to her name. Her husband threatened to kill her and abused her. He poured kerosene upon her from the bottle-lamp and lighted a matchstick and set her on fire. Her Saree caught fire and soon her body was up in flames. Her husband pushed her to the side of Padvi in the house. She shouted, which attracted the attention of her brother-in-law Shivaji and his wife Mangal who came rushing. At that time her husband poured water upon her person and extinguished the fire. Shivaji, Mangal and her husband (appellant) had carried her to the hospital.

10. At the hearing of the appeal, the learned Advocate for the appellant assailed the findings recorded by the trial Court which in this case are based on the two documents Exh.25 and Exh.37 (which incidentally has been treated by the investigating authorities as the F.I.R) as against the very first statement of the deceased Lata at Exh. 51 as deposed by DW-1 & DW-2 recorded earlier on 1/5/2002 and the second statement or dying declaration which was recorded on 3/5/2002 and which is at Exh. 37. The first head of attack proceeds on the footing that these documents (Exh.25 and Exh.37) essentially contradict with the earlier document Exh.51. What the learned Advocate emphasizes is that at the earliest point of time, deceased Lata has stated that she had received burns as a result of accident due to flickering of the flames of the stove. Two days later she

has virtually altered the version to the extent that she has stated that her husband poured kerosene on her person and set her on fire.

11. The learned Advocate submitted that in a case where there are only very minor variations that a Court may either reconcile them or may also overlook them provided it does not essentially affect or alter the main thrust of the accusations. He submitted that in this case the deceased Lata has swung from the first and earliest theory of the accident to homicide and with such grave and material accusations against her husband that no Court can rely on either of the dying declarations. Learned Advocate invited our attention to the following rulings:

i) Smt. Kamla Vs. State of Punjab,

ii) Kishan Lal Sethi Vs. Jagan Nath and another,

iii) Mohanlal Gangaram Gehani v. State of Maharashtra 1982 SCC (Cri) 334

12. We do not need to mention the settled proposition that if there are multiple dying declarations and the deceased has given different versions at different times, then a Court will be left with no option except to hold that it is unsafe to rely upon any of the particular statement to the exclusion of the others.

13. The learned Advocate therefore submitted that in a case where it is not possible to reconcile the diametrically opposing versions then it would be totally unsafe for the Court to base a conviction purely on incriminating material. On the other hand, the learned Additional Public Prosecutor submitted that if a particular statement, be it the version at the earliest point of time or the one which emerges later when the deponent was in a better position to tell the truth, which inspires the judicial mind and confidence of the Court, then it is certainly open for the Court to accept that part of the evidence to the exclusion of the other given under the undue influence, coercion or threat from the husband. What Learned A.P.P. states that undoubtedly at the earliest point of time Lata indicated that her Saree caught fire due to flickering of the flames of the stove. But, the learned APP states that it is one of the rare and unusual cases in which at a later point of time the deponent has very clearly explained and indicated why she had put forward something other than the truth at an earlier stage. The learned A.P.P. submits that the explanation ought to be accepted as quite plausible so that the subsequent dying declaration must really be treated as voluntary, true and acceptable in the light of circumstances under which earliest statement was made.

14. Deceased Lata has clearly pointed out the reasons why she could not tell the truth in her first statement which was recorded earlier. It is this submission for which there is supportive evidence in this case from the oral evidence of the prosecution witnesses, particularly, PW-3 Suman and PW-5 Murlidhar, PW-7 A.S.I. Narendra, PW-9 Dr Ravindra, and PW-10 Dr Anil Shinde. All these witnesses have supported the view that Exh.25 which is the dying declaration

recorded on 07/5/2002 is in fact a reliable document, as true and voluntary.

15. We may mention in brief that PW-3 Suman Pawar (mother of Lata), PW-6 Hemant Pawar (brother of Lata), and PW-5 Murlidhar Pawar (uncle of Lata) are quite categorical about the generality of the accusations and in particular Lata's charge that she was being ill-treated by her husband for purposes of extorting her share in her father's (ancestral) property. The evidence even indicates that accused had gone to the extent of telling the deceased that the purpose of getting rid of her was her failure to get the share in her father's property in the name of the appellant. The learned A.P.P. submitted that this evidence has got to be looked at in the light of Lata's candid explanation that she was threatened by the accused that if she implicated him in the incident of burning, he would kill her brother and others and this was the reason why she was compelled under the circumstances to put forward the accident theory. The submission proceeded on the line that the explanation by Lata ought to be considered as a valid and correct one, and reliable to the effect of nullifying the earlier version (Exh.51) put forward by her under the threat and undue influence of her husband for upholding the truth which appears mentioned in Exh.37 and Exh.25.

16. We have very carefully assessed the evidence of PW-3 Suman Pawar, PW-5 Murlidhar Pawar and PW-6 Hemant Pawar. PW-3 Suman's evidence does support the view that deceased-Lata was ill treated constantly since two years prior to the incident. The accused was insisting upon Lata to get her share in her ancestral land transferred in her name, he used to assault her and that Lata told her about the ill-treatment when Lata had come to her house. The accused used to create disputes under the influence of liquor and hence relatives were not giving any land to him. PW-3 Suman went to the hospital with her son at about 10.30 p.m., when the accused was present. In his presence, Lata was not prepared to disclose anything as to how she was burnt. But Lata told her mother that she will disclose after 2 days. Later on next day itself, Lata disclosed to her mother that her husband Tanaji sprinkled kerosene on her person and set her on fire since she did not ask for share in her father's estate. Lata also disclosed to her mother that the accused, his brother and his wife had brought her to the hospital and the accused had threatened her in the rickshaw that she shall not disclose that the accused had set her on fire, otherwise he will kill her. Her husband thus wanted Lata to disclose that she got burnt accidentally due to flickering of the flames of the stove. Thus the fact which is established is that Lata had received ill-treatment at the hands of the accused and lastly the fact that the deceased Lata was pressurized into putting forward an incorrect version of the incident at the earliest point of time due to fear from her husband. This, in our view, is reinforced by the evidence of PW-5 Murlidhar (who is uncle of Lata). He deposed that he had received a telephone message at about 8.30 p.m. on 1/5/2002 at Mumbai from the neighbourer that Lata was burnt and admitted in hospital at Satara. He returned to the native place and then went to the Civil Hospital at Satara. PW-5 inquired as to how Lata was burnt and she disclosed that her husband had sprinkled kerosene upon her and set her on fire with the

help of match-stick. She also disclosed about the fact that her husband had insisted that she should say that she was burnt by flickering of the stove otherwise her relatives would be finished off.

17. PW-6 Hemant Pawar (brother of the deceased) also deposed that Lata was telling him that she was harassed by the accused who insisted upon her to demand share in the property of her father and used to assault her. The accused-Tanaji had also visited the house of Hemant to demand share of Lata (his wife) which the witness says that he assured the accused that it will be given, if he treat his sister properly.

18. PWs-3 & 5 had visited the hospital and had occasion to talk to the deceased Lata. Unless the deceased had in fact told them about the harassment and the subsequent incident of setting her on fire by accused, it is most unlikely that they would fabricate the false story against the accused with whom they had neither any kind of adverse relationship nor any axe to grind. If the accused was not in any way responsible for the death of Lata, it would be difficult to understand as to why there would be any need for him to threaten her while he had carried her by the rickshaw. Lata being a simple, at least educated girl could not come up with the factual story of the incident, due to fear and pressure of her husband. However, as soon as she got the first opportunity she had disclosed the factual incident. In totality, therefore, there is a perfectly plausible and acceptable explanation coming from the victim herself, well supported by other evidence on record which is self explanatory to clear off the divergence between the two different versions in dying declarations.

19. In the reported cases cited by learned Advocate for the appellant, there was no such explanation on record and there was no material evidence to support such an explanation. This is an unusual case, but, it also furnishes a novel angle of the law in so far as it leads us to a conclusion that where there are two divergent versions in statements by the deceased which are capable of being fully and totally reconciled, then the Court need not reject them merely because prima facie they appear different. The position that emerges is, therefore, that the Court will have to momentarily put itself into the shoes of the deceased and if this is done, the whole picture becomes clear. The deceased, after sustaining the burns was taken to the hospital by the accused by rickshaw. He had threatened Lata with dire consequences to her and her brother and if she implicates the accused in the act of burning and she, therefore, was compelled to make her initial statement in this background to DW-2 Dr. Smeeta and to DW-1 Chitrasain. The learned Trial Judge was, therefore, justified in his view to record conviction on the basis of the documents Exh.25 and Exh.37. They can validly form the basis of a conviction considering the evidence as to why and how the first statement (Exh. 51) was made.

20. In three Judge Bench decision of the Supreme Court in *Panneerselvam v. State of Tamil Nadu* (2008) 17 SCC 190 and also the principles governing the dying declaration are summed up in *Smt. Paniben Vs. State of Gujarat*, . The

analysis of the above decisions clearly shows that:

- (i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the Court;
- (ii) The Court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination;
- (iii) Where the Court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration;
- (iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence;
- (v) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence;
- (vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction;
- (vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected;
- (viii) Even if it is a brief statement, it is not to be discarded;
- (ix) When the eye-witness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail;
- (x) If after careful scrutiny, the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration.

21. In the case in hand, the learned Additional Sessions Judge has found the dying declaration (Exh.25) credit worthy and has held the same to have been made by the deceased in a fit mental state to depose. The English translation of the relevant portion of the dying declaration, recorded in Marathi as made by the deceased Lata to PW-1 is thus:

On 1/5/2002 at 11 a.m. while I was at my house, my husband Tanaji returned by Truck from Mahu, he had brought burning wood which I and my husband had kept arranged on the loft. After that my husband Tanaji said to cook eggs curry, therefore I had cut the onion. At that time, my husband started abusing me and said that he had at several times told me to get the share in the land from your parental property falling to your share, but you are not getting it transferred in your name therefore I will not leave you alive. That time I went to Pardi and after a short while returned to the house at that time my husband again started abusing me and said again that I will not leave you alive and immediately poured

kerosene from the bottle lamp on my person and took a match box lying nearby and lighted one match stick from the box and put the same on my person therefore my Saree caught fire and my body was engulfed by big flame. Seeing this he pushed me towards Padvi. At that time I shouted and hearing the shouts my brother-in-law and his wife came running. At that time my husband poured water and extinguished the fire. Thereafter my brother-in-law Shivaji, his wife Mangal, my Husband Tanaji carried me to this Hospital by rickshaw. While bringing me to the hospital by rickshaw, my husband told me that I shall tell that I got burns due to flickering flames of the stove otherwise he will not leave her, her brother and members from her parental family alive. Therefore I had told a lie in my earlier dying declaration that I got burns due to flickering of flames from the stove. The statement I am giving is genuine and true.

In our opinion, the dying declaration must be accepted as true and voluntary in the facts and circumstances of the case.

22. The plea of the accused in his defence that he had carried Lata by the Truck to the Hospital appears a blatant lie as the evidence clearly indicated that Lata was taken to the hospital by a rickshaw. The appellant's conduct to threaten Lata and cause deliberate delay for taking her to the Civil Hospital, Satara and his not informing the mother and brother of Lata of the incident till late in the evening although the incident occurred in the morning at about 11:00 a.m., more so, when there is telephone connection at his house, is further incriminatory circumstance furnishing links against the appellant to make the chain complete against him. The learned trial Judge has considered the entire evidence in detail to arrive at the only logical and correct conclusion, in the facts and circumstances of the case.

23. No ground is made out to interfere with the findings of guilt, recorded by the trial court. In the result, Criminal Appeal is dismissed.