
(1999) 08 SC CK 0091
In the Supreme Court Of India
Case No : Criminal Appeal No. 232 of 1998

Shripatrao

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 04-08-1999

Acts Referred:

Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 302, 498A

Citation : (1999) 2 ACR 1876 : (1999) 2 ALD(Cri) 481 : (1999) 2 ALT(Cri) 439 :
(1999) CriLJ 5002 : (1999) 2 DMC 605 : (1999) 6 JT 264 : (1999) 5 SCALE 206 :
(2000) 10 SCC 320 : (1999) 2 UJ 1389

Hon'ble Judges : S.N. Phukan, J;G. T. Nanavati, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Nanavati, J.—The appellant has been convicted under Sections 302 and 498A IPC, for causing death of his wife by pouring kerosene over her body and setting her ablaze. The High Court dismissed the appeal as it did not find any good reason to interfere with the judgment of the trial Court.

2. We have gone through the evidence and we find that all the eight dying declarations are almost consistent. One of them was made to Doctor H.S. Maharaj (P.W.-1) to whom she was taken for treatment. He has clearly deposed that soon after Meena was admitted in the hospital at 7.30 a.m., she had told him that her husband had poured kerosene on her clothes and set her ablaze. This was told to the doctor when he had tried to ascertain from her how she had received burns. The doctor made a note of it the case papers (Ex. 14). The evidence of Dr. Maharaj thus receives support from contemporaneous document. The doctor had no reason to falsely depose against the accused or to prepare false case papers.

3. The doctor has further stated that he had informed Police Sub-Inspector or Umri Police Station that Meena was brought to the hospital with burns at 7.20

a.m. and thereafter had also written a letter (Ex. 13) to the P.S.I. for getting her dying declaration recorded. The said letter (Ex. 13) was written at 8.50 a.m. The police after receiving the same had forwarded the same to the Special Executive Magistrate, Shri Sharma (P.W.-8) who received it at 10 a.m. Mr. Sharma had then proceeded to Umri dispensary and after ascertaining fitness of Meena from Dr. Maharaj (P.W. 1) and also after ascertaining it himself had recorded her dying declaration (Ex. 32). In his cross-examination, he admitted that the said dying declaration was not in his hand but in fact it was written by one constable as it was difficult to write with his trembling hand. Merely because that fact is not mentioned in the dying declaration it cannot be regarded as suspicious. It bears signature of the doctor and also that of the Executive Magistrate. It is also true as contended by the learned Counsel for the appellant that no time is mentioned in the said dying declaration. That cannot also affect genuineness of the said dying declaration as there is nothing to show that the Executive Magistrate was not telling the truth. The Executive Magistrate had received the requisition at 10.00 a.m. and Meena was shifted at 11.00 a.m. from Umri to Civil Hospital at Nanded. Therefore, her statement was recorded between 10.00 and 11.00 a.m..

4. At Nanded, her dying declaration was recorded by Sub-Judicial Magistrate Shri Sahdev (P.W. 2) at about 3.30 p.m.. We do not find any infirmity either in his evidence or in the manner of recording the dying declaration. The only suggestion made to this witness was that he had prepared the dying declaration (Ex. 21) as desired by one Laxman and the Police Patil. This suggestion was denied by him. We do not find any material on record to suggest that Sub-Judicial Magistrate was under any influence of those persons or he had any reason to oblige them. These three dying declarations, apart from other dying declarations, being reliable and truthful were rightly relied upon by the Courts below.

5. The High Court was therefore right in confirming the conviction of the appellant and dismissing his appeal. As we do not find any substance in this appeal it is dismissed.