

(2020) 02 BOM CK 0029
In the Bombay High Court
Case No : Criminal Appeal No. 746 Of 2000

State Of Maharashtra

APPELLANT

Vs

Kashinath Anandrao Gunjal

RESPONDENT

Date of Decision : 04-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 302, 306

Citation : (2020) 02 BOM CK 0029

Hon'ble Judges : S.S. Shinde, J;V.G. Bisht, J

Bench : Division Bench

Advocate : M.M. Deshmukh

Final Decision : Dismissed

Judgement

S.S. Shinde, J

1. The Appellant-State has preferred this Appeal against the judgment and order dated 3rd July, 2000 passed by the learned 8th Additional Sessions

Judge, Pune in Sessions Case No. 440 of 1999 thereby acquitting the Respondent "Accused for the offence punishable under Section 302 of the

Indian Penal Code (for short "IPC").

2. The case of the prosecution, in brief, can be stated thus:-

Kashinath Gunjal, Respondent/Accused at the relevant time was working in a private company as a wireman. He married deceased Sangita before 12

years. He was addicted to liquor and used to ill-treat his wife Sangita. On the day of incident i.e., on 15th May, 1999 at about 2.00 p.m. he quarreled

with Sangita and thereafter, the Respondent/Accused set her on fire. She was admitted in the Sasoon Hospital, Pune by the Respondent /Accused.

She gave her dying declaration before the Special Executive Magistrate that she

was accidentally burnt due to flaring of stove. The medical officer examined her and found that she sustained 100% burns. Her relatives at Kedgaon, District Ahmednagar were informed by the respondent/accused.

On the next day i.e., on 16th May, 2000, Sangita, the deceased, gave another statement before the Executive Magistrate and changed her earlier

version. She stated that on account of petty quarrels, her husband slapped her and abused her and thereafter, by pouring kerosene on her, set her on

fire. The police who had received an information about the incident recorded the complaint at Exh. 34 of deceased Sangita.

3. The second dying declaration of Sangita was treated as F.I.R. being Crime No. 179 of 1999 for the offence punishable under Section 306 of the

IPC. The Respondent /Accused was arrested. The investigating officer completed the investigation and filed chargesheet. Since the case was triable

by the Sessions Court, the same was committed to the Sessions Court. The charge was framed at exhibit 5 and after full fledged trial the Respondent

-Accused has been acquitted. Hence, this Appeal filed by the State of Maharashtra.

4. The Respondent/Accused is duly served and advocate is engaged by him. Today, when the matter is called out, none appears for the

Respondent./Accused.

5. The learned APP invites our attention to the contents of dying declarations so also evidence of prosecution witnesses and submits that the impugned

judgment passed by the Sessions Court is not legally sustainable.

6. With the able assistance of the learned APP, we have carefully perused the notes of evidence. At the outset, it would be apt to reproduce

hereinbelow relevant portion from the dying declaration at exhibit 22 given by Sangita and recorded on 15th May, 1999 at 16.20 hours by the Special

Executive Magistrate (PW-1).

In reply to question No.3 i.e., \ Sangita answered,

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â?? 2.00 . . .

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7. On 16th May, 1999, Sangita again gave another dying declaration, at exhibit 24, at 13.00 hours. In reply to ques.tion No.3 i.e., â??

\ Sangita answered, â?? . . .

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8. In order to prove the aforesaid two dying declarations, the prosecution examined Kantilal Rajaram Adsul (PW-1). In his deposition, he stated that

before recording dying declaration at exhibit 22 by putting certain questions to Sangita, he ascertained that Sangita was mentally fit to give dying

declaration and thereafter her statement was recorded. The said statement at exhibit 22 has been recorded as per her narration. In respect of another

dying declaration at exhibit 24 he stated that the statement given by Sangita at exhibit 24 has been recorded as per her narration.

9. Upon careful perusal of answer given by Sangita to question No.3 in dying declaration at exhibit 22, she stated that while cooking food at about 2.00

p.m., the border of her saree came in contact with flames of stove and then she sustained burn injuries. Her husband was sleeping in the house. She

has not given any complaint against anybody. However, in the second dying declaration at exhibit 24 recorded on 16th May, 1999, in reply to question

No.3, she stated that there is dispute between herself and her husband from last four years. The marriage was solemnized before 12 to 13 years back

and out of the said wedlock, there are two children. Yesterday, her husband returned from the work at about 12.30 p.m. and had lunch. Children were

watching T.V. in the neighbour's house. Only husband and herself were in their house. There was quarrel between herself and her husband, and

husband assaulted and abused her. Husband was not doing any work and she

used to wash clothes and utensils so as to earn livelihood. Thereafter, her husband poured kerosene on her body and set her ablaze.

10. On comparison of two versions in reply to question No.3 in two dying declarations, at exhibits 22 and 24 respectively, there is total variance. In the first dying declaration, Sangita did not attribute any overt act to the husband, however, in second dying declaration, she has mentioned the name of the husband stating that the husband poured kerosene on her person and set her ablaze. There is total variance in the version of Sangita in the aforesaid two dying declarations. Therefore, the trial Court has rightly disbelieved the dying declarations and acquitted the Respondent/Accused. The finding recorded by the trial Court appears to be in consonance with the evidence on record. There is no perversity as such and the view taken by the trial Court is plausible. In that view of the matter, we do not find any merits in the Appeal. Hence the following order:-

ORDER

Criminal Appeal No. 746 of 2000 stands dismissed. Bail bond of the Respondent / Accused, if any, stands cancelled.