

(2018) 03 BOM CK 0136
In the Bombay High Court
Case No : CRIMINAL APPEAL NO.310 OF 2003

STATE OF Maharashtra

APPELLANT

Vs

LILABAI SOPAN PAWAR & ORS

RESPONDENT

Date of Decision : 15-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 498-A
Code of Criminal Procedure, 1973 — Section 313

Citation : (2018) 03 BOM CK 0136

Hon'ble Judges : S.S. SHINDE, J, S.M. GAVHANE, J

Bench : Division Bench

Advocate : S.M. Ganachari, S.V. Sudrik, S.S. Jadhavar

Final Decision : Dismissed

Judgement

S.S. SHINDE, J

1.This Appeal is directed against the Judgment and Order dated 7th January, 2003 passed by the IInd Adhoc Additional Sessions Judge, Ahmednagar

in Sessions Case No. 52 of 2001, thereby acquitting both the accused i.e. Respondent Nos.1 and 2 from the offences punishable under Sections 302,

498A read with section 34 of the the Indian Penal Code (for short "I.P. Code").

2. The prosecution case, in brief, is as under:

A) Smt. Chadrakala Devidas Kale (PW1) resides at Kolhapur. Deceased Pratibha was the daughter of PW1 Chandrakala and deceased

Devidas Kale, who died prior to the marriage of Pratibha. Accused Suresh is the only son of accused Lilabai. His father also died during his childhood.

Both accused Lilabai and Suresh are in service and also own house in Butkarwadi, Ahmednagar.

B) It is the case of the prosecution that, the marriage of Pratibha (now deceased) and Suresh Pawar was solemnized, and during the said marriage

dowry was also paid. After marriage, Pratibha went for cohabitation with accused. During first year of the marriage, there was proper cohabitation

between the spouse. Thereafter, both the accused started illtreating Pratibha thereby making demand of Rs.15,000/Â from her mother so as to

purchase motorcycle. Pratibha used to tell about the said illtreatment to Chandrakala (PWÂ1) whenever, there was telephonic conversation between

them, and when Pratibha used to visit her parent's house. Prior to one year of the alleged incident, deceased Pratibha had been to her mother's house.

At that time she told her mother about the demand made by the accused of Rs.15,000/Â and on refusal an illtreatment meted out to her, at the hands

of the accused persons. Pratibha had also told Chandrakala (PWÂ1) that, due to nonÂfulfillment of demand of Rs.15,000/Â, both the accused had

caused burn injuries on her back. Chandrakala (PWÂ1) had seen those burns. Pratibha was given treatment in the hospital. Thereafter, Chandrakala

(PWÂ1), her brother Bhagchand, brotherÂinÂlaw Ankush Dahikar, her elder son Sagar brought Pratibha to the house of accused persons, and they

requested the accused not to give illtreatment to her and left her for cohabitation.

C) It is the case of the prosecution that, on 8th January, 2001 at about 21 to 21.30 hours, after taking sup, both accused sprinkled kerosene on the

person of Pratibha and set her on fire when she was in the kitchen room. Pratibha shouted for help and the neighbourers, viz., Ramesh Anant

Deshpande (PWÂ8) and one Shabbir Karimoddin rushed to the spot. They saw that, both accused were extinguishing the fire on the person of

Pratibha by throwing water. Accused Suresh during that task had also received the burn injuries to his left hand, mouth, legs etc. With the help of

Ramesh (PWÂ?8), both accused brought Pratibha to Civil Hospital, Ahmednagar by rickshaw.

D) It is the case of the prosecution that, on 8th January, 2001, at about 10.00 p.m. deceased Pratibha was admitted in Civil Hospital, and immediately

Dr. Shri Manoj Bapurao Ghuge, Chief Medical Officer had given treatment. When deceased Pratibha was admitted in the hospital, he recorded the

history and mentioned in it that, Pratibha received 98% burn injuries.

E) It is the case of the prosecution that, the Head Constable Shri Shiwaji Natha

Sathe (PWÂ4) was on duty in Civil Hospital on 8th January, 2001.

During that period, at about 10.30 p.m., he gave requisition to Dr. Shri Ghuge for his opinion, so as to know as to whether Pratibha was physically and

mentally fit to give statement or not. Pratibha was in semiÂconscious condition, therefore, her statement was not recorded. Immediately, on intimation

given to Topkhana Police Station, about the admission of Pratibha in the Civil Hospital, the P.S.O. on duty informed to

Shri Maruti Sambhaji Sadaphule(PWÂ10), Assistant Police Inspector of Tophkhana Police Station, and he immediately went to Civil Hospital, and

gave directions to Shri Sathe, to record the dying declaration of Pratibha through the Magistrate.

F) It is the case of the prosecution that, on the next day early in the morning, Shri Sadaphule (PWÂ10) again went to the Civil Hospital. Accused

Lilabai was present near Pratibha. Shri Sadaphule and accused Lilabai went to the house of accused persons, situate at Bhutkarwadi, Ahmednagar. In

presence of Vijay Keshavrao Jagtap (PWÂ7) and other panch Sanjay Pralhad Dangade and accused Lilabai, Shri Sadaphule prepared the spot

panchanama. He also noticed in Kitchen room one tin of 5 liters kerosene, having one liter kerosene, half burnt pieces of Sari, Petticoat, Match stick

box, one used match stick, one white coloured burnt pajama. He seized the above articles in presence of above panchas as per procedure and drawn

spot panchanama in between 7 a.m. to 7.45 a.m.

G) It is the case of the prosecution that, in the night of 8th January, 2001, the brotherÂinÂ law of Chandrakala informed her that, Pratibha was

admitted in Civil Hospital, Ahmednagar. Chandrakala (PWÂ1) with her elder son Sagar came to Pune. Along with elder brother of PWÂ1, Shri

Bhagchand, they came to Ahmednagar at about 9 to 10 a.m. They directly went to Civil Hospital, Ahmednagar and noticed pitiable condition of

Pratibha, who was not in a position to speak. After one hour of their arrival, Pratibha told Chandrakala that both accused poured kerosene on her

person and set her on fire.

H) It is the case of the prosecution that, Pratibha also disclosed above fact to her paternal uncle Shri Bhagchand during noon time. By that time, Shri

Sathe, P.H.C. had given requisition to the Special Judicial MagistrateÂ Shri Ramchandra Ganpat Dimle (PWÂ5). The Special Judicial Magistrate

immediately after receipt of requisition at about 4.35 p.m. came to Civil Hospital and contacted Shri Sathe and thereafter approached to C.M.O. Dr.

Kalyan Gulabrao Bhosale (PWÂ9) and requested him to examine Pratibha and to give opinion, whether she was in a position to give statement. Dr.

Shri Bhosale examined Pratibha and opined in writing that, Pratibha was conscious and able to give statement. Thereafter, in presence of Dr. Shri

Bhosale, Shri Dimale recorded the dying declaration of Pratibha. Thereafter again Dr. Bhosale examined Pratibha. Then Shri Dimale handed over the

dying declaration to Head constable Shri Sathe for further action.

I) It is the case of the prosecution that, Shri Sathe with his covering letter, immediately forwarded the said dying declaration to Topkhana Police

Station, Ahmednagar. The P.S.O. of Topkhana Police Station, on the basis of said dying declaration, registered the Crime No. IÂ5/2001 under sections

307, 498ÂA read with 34 of the Indian Penal Code. Thereafter the investigation was handed over to Shri Sadafule, Assistant Commissioner.

Thereafter, Shri Sadaphule immediately went to Civil Hospital and recorded the statement of Pratibha at about 6 to 6.30 p.m. Then he recorded the

statements of witnesses. On 10th January, 2001 at 13 hours, he arrested accused Lilabai, who produced her Sari and a shirt in presence of Shri Vijay

Jagtap. On 10th January, 2001, at about 23 hours deceased Pratibha succumbed to the injuries. On 11th January, 2001 in presence of Shri Vishnu

Waman Pofale, Vishnu Baburao Dhole and Smt. Varsha Vishnu Pofale, he prepared the inquest panchanama and sent the dead body for postÂ?

mortem. Dr. Smt. Darshana Dashrath Baravkar(PWÂ6) conducted autopsy. Thereafter, the dead body was handed over to Smt. Chandrakala and

her relatives. Last rituals of Pratibha were performed at Jamkhed.

J) Accused Â Suresh was admitted as an indoor patient and was discharged from the hospital on 29th January, 2001. Shri Sadaphule handed over

further investigation of the Crime to P.S.I. Shri Devidas Raghunath Bhoj (PWÂ3). Shri Bhoj on 8th March, 2001 sent the muddemal articles to C.A.

Aurangabad for examination with report. He accordingly submitted the chargeÂsheet against the accused persons. The Chief Judicial Magistrate

committed the case to the Court of Sessions.

3. A charge was framed by the IInd Adhoc Additional Sessions Judge, Ahmednagar against the accused persons, to which accused pleaded not guilty

and claimed to be tried. The defence of the accused was of total denial. The defence of the accused as per their statements recorded under section

313 of the Code of Criminal Procedure and written statement filed by them is that, they never demanded money for purchasing the motorcycle.

Accused â?" Suresh is already possessing motorcycle since before the marriage. Both accused are serving and therefore, their financial condition is

sound. They never asked Pratibha to bring any amount. On the contrary, married life of Pratibha and Suresh was happy. Through the said wedlock,

Pratibha delivered a son namely Akash. On the day of incident, as the gas cylinder was empty, Pratibha ignited the kerosene stove for heating the milk

for their son Akash. There was burst of stove and during that incident, Pratibha caught fire and received burn injuries. Both accused tried to extinguish

the fire by throwing water on the person of Pratibha. In the said process, accused Suresh also received burn injuries to his left hand and face and his

pijama also caught fire. Both the accused with the help of neighbourers took Pratibha to the Civil Hospital and admitted her for treatment.

4. After recording the evidence and conducting full fledged trial, the trial Court acquitted the accused i.e. Respondent Nos.1 and 2 from the offences

with which they were charged, as stated herein above in ParaÂ?1 of the Judgment. Hence this Appeal.

5. Shri S.M. Ganachari, learned A.P.P. appearing for the State submits that, the prosecution case rests upon the two written dying declarations and

oral dying declaration made by Pratibha. He invites our attention to the contents of the dying declaration recorded by the Special Judicial Magistrate,

and submits that, Pratibha (now deceased) stated in her dying declaration that, the husband and motherÂ?inÂ?law poured kerosene on her person and

set her ablaze. They were harassing her since no amount of dowry was given to them. The husband is serving in Income Tax Department. MotherÂ?

inÂ?law always used to quarrel with her. The husband tried to extinguish the fire. People from the said locality gathered on the spot and thereafter she

was taken to Hospital. It is submitted that, the said dying declaration has been proved by the prosecution through Special Judicial Magistrate and

Medical Officer, which inspires full confidence. He further submits that, there is another dying declaration recorded by the Police Officer at Exhibit

Â?50, which also inspires confidence. Apart from the said two dying declarations, Pratibha had given oral dying declaration to her mother, which lends

corroboration to two written dying declarations. Learned A.P.P. appearing for the Respondent â?" State, by relying upon the notes of evidence,

submits that, the appeal deserves to be allowed.

6. On the other hand, learned counsel appearing for Respondent Nos.1 and 2 â?" original accused, submits that, both the accused at the relevant time

were in the employment and earning more than Rs.12,000/Â per month, and therefore, the allegations of alleged demand of Rs.15,000/Â is not

sustainable. It is submitted that, the father of Pratibha expired before her marriage, therefore, the question of demand of Rs.15,000/Â would not arise.

It is submitted that, due to burst of stove said Pratibha caught fire, and accused no.2 had tried to extinguish the fire and in said process he also

sustained 10% burns. The prosecution did not bring on record the injury certificate of injuries sustained by accused no.2. It is submitted that, while

narrating the history with the Medical Officer, Pratibha told the Medical Officer that, she sustained the burn injuries due to burst of stove. Immediate

neighbour residing in the said vicinity viz., Ramesh, immediately arrived at the spot and saw that, both the accused were extinguishing the fire and the

accused were not responsible for such burns to Pratibha. It is submitted that, the investigation was carried out in faulty manner. The Investigating

Officer intentionally did not bring on record, the factual position about the recovery of stove from the house of the accused. The fact that the injury

certificate of the accused Â Suresh was not brought on record, clearly shows that, the investigation was conducted in a biased and faulty manner.

Therefore, relying upon the findings recorded by the trial Court, learned counsel appearing for the Respondents, submits that the trial Court has taken

a possible view, and therefore, the order of acquittal needs no interference.

7. Heard learned A.P.P. appearing for the State and learned counsel appearing for Respondent Nos.1 and 2 Â accused Nos.1 and 2, at length. With

their able assistance, we have carefully perused the entire notes of evidence so as to find out whether the findings recorded by the trial Court are in

consonance with the evidence brought on record or there is perversity.

8. Upon careful perusal of the evidence of mother of Pratibha and other relatives, it is tried to be suggested that, on account of unlawful demand of

Rs.15,000/Â and on an inability to pay such amount by the mother of Pratibha, the accused have poured kerosene on the person of Pratibha and set

her ablaze. Admittedly, accused no.1 was serving as a peon and was getting Rs.5,000/Â per month and accused no.2 was also serving as a Stenographer in Income Tax Department and earning Rs.7,000/Â to Rs.8,000/Â per month. Therefore, the income of the accused at the relevant time was more than Rs.12,000/Â per month. On the other hand, it has come on record that, the father of Pratibha was not alive at the time of marriage, and if the financial position of the accused is kept in view, the possibility of such unlawful demand of Rs.15,000/Â, which has not been proved by the prosecution, is ruled out.

9. Upon careful perusal of the dying declaration at Exhibit â?" 36 recorded by the Special Judicial Magistrate, it is stated that, the husband and motherÂinÂlaw of Pratibha poured kerosene on her person. However, it is not stated in the said dying declaration that, as to who has ignited the matchstick and set her ablaze. It is also stated that, there is child of two and half years. The husband was working in the Income Tax Department. It has also stated in the dying declaration that the husband tried to extinguish the fire. Neighbours arrived at the spot. Her mental condition was not fit, and therefore, she could not tell anything more. Upon perusal of the evidence of the Medical Officer, it appears that, Pratibha sustained 98% burn injuries and she died due to said 98% superficial to deep injuries. It further appears that the right upper limb and also left upper limb were burnt 9% respectively. Upon perusal of the Medical evidence it appears that, there was 100% burns to fingers, and therefore, it is difficult to believe the prosecution case that, Pratibha was able to give the thumb impression.

10. When Pratibha was taken to the hospital, she stated that, she received the said burn injuries due to burst of stove. At this juncture, it is also relevant to refer to the evidence of Ramesh Anant Deshpande (PWÂ8). In his examinationÂ inÂchief, he stated that, he is residing in Varad Colony opposite to Shabbir Kamroddin. He knew both the accused. Both accused are residing opposite to his house. He was knowing Pratibha Pawar. The incident took place on 9th January, 2001 at about 9 to 9.30 p.m. He did not recollect the exact date of the incident. He was at home, after taking sup he was watching the T.V. He heard the shouting from the house of accused. Therefore, he came out of the house and saw that, there was flame out of the house of the accused. He rushed for the help. Shabbir Kamroddin also

rushed for help. He saw that Pratibha was under flames. He admitted Pratibha to Civil Hospital. Pratibha was now no more. He cannot tell how many days after the incident, Pratibha died. This witness, in his cross examination stated that, when he went there, both accused were extinguishing the fire on the person of Pratibha with the help of water. The accused persons had already extinguished the fire on the person of Pratibha, and therefore, question of extinguishing the fire by him does not arise. When he went in the house at that time, on the kitchen platform, there was a stove. The stove was lying on the floor and it was burning. Accused Suresh had also received burn injuries on his face and hand. Both accused, he himself and Shabbir Kamroddin took Pratibha to the hospital in a rickshaw. He made enquiry with Pratibha and she told him that, stove was burst and due to which she caught fire.

11. It is clear from reading evidence of Ramesh (PW8) in its entirety that, he immediately went to the house of the accused and saw that, there were flames out of house of the accused and Pratibha was under flames. He admitted Pratibha to Civil Hospital. He stated that, accused were trying to extinguish the fire on the person of Pratibha with the help of water. He further stated that, when he went to the house of the accused, he saw that, the stove was lying on the floor in burst condition and Pratibha was under flames. He saw that, both the accused were extinguishing the fire on the person of Pratibha with the help of water. Both the accused were also accompanied Pratibha in the hospital. When this witness made enquiry with Pratibha, she told him that, stove was burst and due to which she caught fire.

12. We have carefully perused the dying declaration at Exhibit50 recorded by Shri Sadaphule, Police Officer (PW10). The contents of the said dying declaration are almost similar to that of the dying declaration at Exhibit36 recorded by the Special Judicial Magistrate. Therefore, the trial Court has rightly discarded the said dying declaration by recording the reason that, it is a human tendency that one person cannot reproduce same words after a gap of even some minutes. Therefore, we are of the considered view that, both the dying declarations does not inspire confidence. So also regarding the oral dying declarations given by Pratibha to her mother Chandrakala and maternal uncle Bhagchand are concerned, it is pertinent to note that, the Medical evidence brought on record unequivocally establishes that,

Pratibha received 98% burn injuries and it is highly improbable that, a person having received 98% burn injuries could be conscious to give oral statement. Therefore, the prosecution case that, Pratibha had given such oral dying declarations cannot be believed.

13. We have carefully perused the cross examination of the Investigating Officer Maruti Sambhaji Sadaphule (PW 10). He stated in his cross

examination that, accused no.2 Suresh Pawar was admitted in the Civil Hospital, Ahmednagar till 29th January, 2001 for his burn injuries. However,

he stated that, he is not recollecting whether accused " Suresh had received 10% burn injuries. He is not able to recollect whether accused

Suresh had sustained the burn injuries on his face, nose and hands. He admitted that, it was necessary to obtain medical certificate showing the

injuries sustained by accused no.2 " Suresh and submit the same along with the charge sheet. However, the same was not submitted since the

certificate was not obtained by the Investigating Officer.

14. If the case of the prosecution is considered in its entirety, it appears that, Pratibha sustained burn injuries due to burst of stove and her burn injuries

were superficial to deep to the extent of 98%, as stated by the Medical Officer. Her over all physical and mental condition was not good. The fingers

were totally burnt. The accused tried to extinguish the fire and in the said process accused " Suresh sustained 10% burn injuries and he was

hospitalized. His injury certificate was not brought on record or filed along with the charge sheet. There is room for doubt that, the investigation

carried out by the Investigating Officer was not proper and he tried to suppress the genesis of the incident. When Ramesh Anant Deshpande (PW

8), who visited the spot immediately after the incident, in his evidence has clearly stated that, the stove was lying on the floor, however, the said stove

has not been shown by the Investigating Officer in the spot panchanama.

15. We have carefully gone through the findings recorded by the trial Court and upon re appreciation of the evidence, we find that, the findings

recorded by the trial Court are in consonance with the evidence brought on record. The trial Court has given detail findings and since we are in

agreement with the said findings, in order to avoid repetition, we have not discussed the same in detail.

16. The law is well settled that, if the possible view has been taken by the trial

Court, in that case, the order of acquittal deserves no interference. The Supreme Court in the case of Muralidhar alias Gidda and another Vs. State of Karnataka¹ in para 12 held thus:Â?

12. The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu Vs.State, AIR 1954 SC 1,

Madan Mohan Singh Vs. State of U.P., AIR 1954 SC 637, Atley 1. 2014 [4] Mh.L.J. [Cri.] 353 Vs. State of U.P., AIR 1955 SC 807, Aher Raja

Khima Vs. State of Saurashtra, AIR 1956 SC 217, Balbir Singh Vs. State of Punjab, AIR 1957 SC 216, M.G.Agarwal Vs. State of Maharashtra, AIR

1963 SC 200, Noor Khan Vs. State of Rajasthan, AIR 1964 SC 286, Khedu Mohton Vs. State of Bihar, [1970] 2 SCC 450, Shivaji Sahabrao Bobade

Vs. State of Maharashtra, [1973] 2 SCC 793, Lekha Yadav Vs. State of Bihar, [1973] 2 SCC 424, Khem Karan Vs. State of U.P., [1974] 4 SCC

603, Bishan Singh Vs. State of Punjab, [1974] 3 SCC 288, Umedbhai Jadavbhai Vs. State of Gujarat, [1978] 1 SCC 228, K.Gopal Reddy Vs. State of

A.P., [1979] 1 SCC 355, Tota Singh Vs. State of Punjab, [1987] 2 SCC 529, Ram Kumar Vs. State of Haryana, 1995 Supp [1] SCC 248, Madan Lal

Vs. State of J & K, [1997] 7 SCC 677, Sambasivan Vs. State of Kerala, [1998] 5 SCC 412, Bhagwan Singh Vs. State of M.P. [2002] 4 SCC 85,

Harijana Thirupala Vs. Public Prosecutor, High Court of A.P., [2002] 6 SCC 470, C. Antony Vs. K.G.Raghavan Nair, [2003] 1 SCC 1, State of

Karnataka Vs. K.Gopalakrishna, [2005] 9 SCC 291, State of Goa Vs. Sanjay Thakran, [2007] 3 SCC 755 and Chandrappa Vs. State of Karnataka,

[2007] 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with

appeals against acquittal, the appellate Court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person

and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit

of reasonable doubt when it deals with the merit of the appeal against acquittal,

(iii) Though, the powers of the appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions

but the appellate Court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial Court had an advantage of

seeing the demeanor of the witnesses. If the trial court takes a reasonable view

of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate Court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate Court on reAppreciation and reEvaluation of the evidence is inclined to take a different view, interference with

the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. The evenly balanced views of the evidence must not

result in the interference by the appellate Court in the judgment of the trial Court. [Underlines added]

17. In the light of discussion in foregoing paragraphs, we are of the considered view that the findings of acquittal recorded by the trial Court are in

consonance with the evidence brought on record and there is no perversity as such. The view taken by the trial Court is plausible and therefore there

is no reason to cause interference in the order of acquittal.

18. For the reasons aforestated, we are of the opinion that there is no merit in the Appeal filed by the State. The Criminal Appeal stands dismissed.

Bail Bonds, if any, of Respondent Nos.1 and 2, stand cancelled.