

(2020) 01 BOM CK 0042
In the Bombay High Court
Case No : Criminal Appeal No. 236 Of 2000

State Of Maharashtra

APPELLANT

Vs

Sampat Bayaji Thorat And Ors

RESPONDENT

Date of Decision : 03-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302
Code Of Criminal Procedure, 1973 — Section 294
Evidence Act, 1872 — Section 27, 114(g)

Citation : (2020) 01 BOM CK 0042

Hon'ble Judges : S.S. Shinde, J;N.B. Suryawanshi, J

Bench : Division Bench

Advocate : V.B. Konde Deshmukh, C.K. Pendse, M.S. Mohite

Final Decision : Dismissed

Judgement

N.B. Suryawanshi, J

1. By this Appeal the Appellant/State challenges the acquittal recorded in favour of the Respondents/accused under Section 302 read with 34 of Indian Penal Code by the 3rd Additional Sessions Judge, Satara in Sessions Case No.35 of 1994 on 17th January, 2000.

2. The prosecution case in nutshell is that, Malan Lade was staying with her family consisting of husband Abasaheb, daughters Jyoti, Anjali and Mohini. Abasaheb was the Chairman of the housing society. Since he was not feeling well he asked accused No. 1 Sampat Thorat, their neighbour, to look after the work of the society. The relations between the Lade and Thorat families were cordial and they were frequently visiting each other's house. 5-6 years before the incident, accused No. 1 Sampat had taken gold ornaments i.e. necklaces (mohanmall and bormal), 2 golden rings from Abasaheb for purchase of plots in the said colony/society. He collected money from other members also but did not allot plots to them. The persons who had paid money, were insisting Absaheb to either allot plot or return their money, but accused No. 1 was not paying any heed to the

requests of the members of the society. Malan was repeatedly asking accused No. 1 to return the ornaments. 4-5 days prior to the incident, accused No. 1 visited the house of Lade. At that time, Malan asked him about the ornaments or plot. Accused No. 1 told her that he will give decision on Friday.

3. On Friday dated 12th November, 1993 Abasaheb left home for his service. Accused No. 1 visited the house of Malan at around 10.30 am and went away after waiting for some time. He returned on 12.30 noon. At that time, the inmates of Malan's house i.e. her daughters were preparing sweets for Diwali festival. At about 3.00 pm accused No. 1 again came and called Malan to his house. Daughters of Malan who were present in the house, thought that Malan must have gone for discussing about the plot. 15-20 minutes thereafter, accused No. 2 son of accused No. 1, came to them and called Anjali to come to his house. When Anjali and Jyoti went to the house of accused, she found her mother Malan had sustained burn injuries and she was shouting that accused No. 1 had set her on fire. Accused No. 1 took Malan to Krishna Hospital. Thereafter, Anjali and Jyoti went to the police station to lodge complaint, where they came to know that official from the Tahsildar office was deputed to record the statement of their mother. Thereafter, Anjali and Jyoti proceeded to Krishna Hospital. On seeing them, Malan started shouting that accused No. 1 poured kerosene and set her ablaze. While taking treatment, Malan succumbed to burn injuries on the next date i.e. 13th November, 1993. Yuvraj Kamble on 13th November, 1993 came and told them that he has seen the incident of accused pouring kerosene and setting Malan on fire. One Dhanaji also told them same thing. Anjali thereafter went to the police station on 13th November, 1993 and lodged complaint against the accused persons which was registered at C.R. No. 218 of 1993 at Karad police station.

4. After completion of investigation, charge sheet came to be filed and the case was committed to the Sessions Court. Charge under section 302 read with 34 of Indian Penal Code was framed against the accused persons.

5. Accused persons denied the charge and their defence was that, already plot Nos. 48/B/1 and 48/B/2 were given to Abasaheb and Malan. No ornaments were ever given by Malan to the accused No. 1. In fact necklace i.e. mohanmall seized by the police from the house of accused belongs to his wife. The relations between Lade and Thorat family were cordial. However, daughter of Malan namely Mohini had affair with witness Yuvraj, so also another daughter namely Swati had affair with Anil Thorwade. Since Yuvraj was addicted to liquor and was having vices, Lade family and Thorat family did not want Swati to marry with Yuvraj. Therefore, Swati (Jyoti) and Mohini were taken to Kolhapur by the Lade's family and the accused and within 8 days their marriages were performed with two brothers in the same pendal. Because of which Yuvraj developed a grudge against the accused persons. According to the accused, the affairs are still going on. At the behest of Yuvraj the accused are falsely implicated in this case.

6. According to the defence, on the date of incident, Malan went to the house of

accused to help in preparing sweets for Diwali festival. At that time when she was filling kerosene in the stove, some kerosene spilled on her saree and also on the floor, where she was sitting. When she tried to light match stick for starting stove, the burning match stick broke and fell down on the kerosene which was spread on the floor and saree of Malan caught fire. Accused No. 1 Sampat tried to extinguish the fire by putting a quilt on Malan and thereafter accused persons carried Malan to Krishna Hospital. Even at that time, Malan disclosed to Doctor that she caught fire accidentally. In the dying declaration given by her to the Executive Magistrate. She reiterated that she received burn injuries accidentally.

Since these facts were known to Abasaheb, he did not lodge any complaint against accused persons. However, at the behest of Yuvraj, Swati/Anjali has given false complaint due to previous grudge.

7. Heard learned A.P.P. for the State and learned counsel for the Respondents/ Original Accused Nos.1 to 3, perused the record with assistance of learned counsel for the parties.

8. The learned APP assailed the impugned judgment of acquittal arguing that there is voluminous evidence on record which warrants the conviction of the accused. There are 4 oral dying declarations which are brought on record in the evidence of the prosecution witnesses. Evidence of PW.4 Yuvraj, eye witness was wrongly discarded by the learned trial Judge. By placing reliance on the evidence brought on record by the prosecution, the learned APP submits that the impugned judgment is unsustainable and the Appeal deserves to be allowed and the Respondents are liable to be convicted.

9. Per contra, the learned advocate representing the Respondents/accused supports the judgment of acquittal stating that Pw. 4 Yuvraj is an alleged eye witness, is wholly unreliable and the oral dying declarations can not be believed. The medical officer was not examined and the prosecution has suppressed the medical record/ case papers and the dying declaration of the deceased which was recorded by Executive Magistrate in which she has categorically stated that she got burn injuries accidentally. He further argued that it was the duty of the prosecution to bring before the trial Court entire material collected during the course of investigation. However, the prosecution has suppressed the dying declaration (Exhibit 41). Said dying declaration was brought on record by moving an application under section 294 of Cr.P.C. by defence as the said dying declaration was part of the charge sheet supplied to the accused. He therefore, submits that there is no substance in the Appeal filed by the State and this is not a case to warrant interference by this Court in the judgment of acquittal.

10. In support of its case, the prosecution has examined 9 witnesses. Out of them PW.4 Yuvraj Kamble, an eye witness, PW. 1 Narayan Thorwade, is the panch witness to the spot panchanama (Exhibit 24). PW. 4 Yuvraj has shown the spot of incident and as such his name is reflected in the said panchanama. The burnt saree pieces were found on the spot and kerosene traces were found on

the floor. PW. 2 Niwas Mane is the panch to the memorandum statement of accused No. 1 under section 27 of the Evidence Act, by which accused No. 1 agreed to produce kerosene can and match box from his house. The neckless (mohanmall), kerosene can and matchbox are recovered vide recovery panchanama (Exhibit 27).

11. PW. 3 Anjali Waghmare is the complainant and daughter of deceased Malan, who gave the first information/complainant (Exhibit 31) which was registered vide C.R. No. 218 of 1993 with Karad police station. Anjali deposed in terms of the complaint lodged by her on 13th November, 1993 at 14.05 hours. She has stated in her evidence that when she reached the house of the accused, her mother was outside the door of the accused and she was shouting 'Sampya' immolated me. She was totally burnt. Malan also told her that Sampat and his wife caught her and set her on fire. Thereafter, Anjali and her sister Jyoti went to lodge police complaint. However, their complaint was not taken down, on the ground that no major person accompanied them and they were told to go to Krishna Hospital. Accordingly they went to the hospital. In the hospital also, her mother was shouting that all the accused persons immolated her. Accused No. 1 Sampat and his son were in the hospital at that time. After her father arrived at the hospital, they all went to the house with father. Next day, PW. 3 Anjali came to know that her mother succumbed to burn injuries. Again she went to the police station for lodging complaint, but police avoided to take down on the ground that complaint was not lodged yesterday. Only upon threatening by the complainant that dead body would not be cremated, police took down the complaint (Exhibit 31).

12. In the cross examination, PW. 3 Anjali has admitted that here sister Swati and Mohini were married at Kolhapur in one pendal and accused Sampat took major part in settling the said marriages. She also admitted that her father was admitted in hospital, when her marriage was being performed and accused No. 1 had taken lead in her marriage, as she has no brother. She further admitted that ornaments were given, towards purchase price of plots to be allotted in the name of her mother and father each and that plot numbers 48/B/1 and 48/B/2 were allotted to her father and mother and their names were recorded in the record of those plots. Lade family and family of accused were on visiting terms till the date of incident. It is also admitted that Malan went to the house of accused to help them to prepare sweets for Diwali festival. She also admitted that accused took her mother in burnt condition in rickshaw to hospital. After her father arrived at the hospital, the daughters left with their father for home and in the night though their mother was admitted in the hospital, nobody turned up to see Malan. Even after father came, the daughters did not feel it necessary and to go to lodge complaint in the police station. PW. 3 Anjali admits that Yuvraj was with her at the time of filing of complaint. It is necessary to mention here that statement of her father Abasaheb is not recorded during the course of investigation. This witness has improved her version to a great extent and all the omissions are brought on record and proved through investigating officer. The

omissions are vital and render entire evidence of this witness unworthy of credit.

13. PW. 3 Anjali has substantially improved her version in the Court. Following material omissions in her evidence are brought on record by the defence, as follows:

(1) She has not stated before the police that accused No. 1 Sampat told her mother that he would return the ornaments and asked her to accompany. She also did not tell before the police that Ghanshyam told her that to see how their mother was behaving in their house. (2) She admitted having stated portion mark B in her complaint. She did not tell before the police that when she went to the house of the accused Sampat, her mother told that accused immolated her and they should go and lodge complaint before the police. She did not tell before the police that accused Samapt told her mother as he would return the ornaments in the evening. (3) She also did not tell before the police that on earlier day, police asked her to bring major person. She also did not disclose police that on the next day, police were not accepting her complaint. (4) She was unable to explain as to why the statement that they will not cremate corps unless complaint is not recorded is not there in her police statement and (5) PW.3 Anjali also admitted that Yuvraj visits their house since her childhood.

14. Thus, it is seen that the evidence of Pw. 3 Anjali is not worthy of credit in view of omissions and contradictions brought on record by the defence. Belated lodging of complaint also renders her version and prosecution case doubtful.

15. PW. 4 Yuvraj Kamble claims to be an eye witness. He claims that on the day of incident, he was at his site at Yadav hospital for doing centering work. At about 3.30 pm, he went to buy cigarette, at that time he heard shouts "sod sod mala sod" coming from the house of accused. As he recognized the voice of Malan, he went there and peeped through door. He saw that accused Nos. 2 and 3 had caught hold of Malan and accused No. 1 poured kerosene on the person of Malan and set her on fire. Accused No. 1 then pushed her to the wall. Since, he was frightened he went to the work and after some time, he went to home. This witness admitted in cross examination that on the next day he went to the house of Malan and narrated the incident to her daughter Anjali and Jyoti in the morning at about 9.30 am. He did not go to police nor police came to him. His statement was recorded only before the Magistrate on 3rd January, 1994. He admitted that the pan shop is at a distance of 20-25 feet where cigarettes are available. He states that his centering work was going on at Yadav hospital for 1 ½ years prior to the incident and the hospital is consisting 9 rooms and he only does centering work. He also states that 4-5 persons were working along with him at the said site. He admitted that he did not state before the Magistrate that he heard shouts "sod sod mala sod" . The door of the house of accused faces towards North and he saw the incident from that door. He did not raise any alarm on seeing Malan being set on fire. He did not disclose the incident to the workers who were present with him at the site, so also to his family members. He admitted that till date he meets Mohini.

16. If the spot panchanama is taken into consideration, the house of the accused is facing West. From the pathway of 7 ft., the house of the accused is situated at the end on Eastern side of pathway where the cattle shed and one factory and two houses are situated. From the pathway, one can go to the house of accused and other house and factory. Thus, it is clear that the house of the accused is situated at the end of pathway and PW. 4 Yuvraj had no occasion to go towards the house of accused, while going to purchase cigarette. It also cannot be believed that centering work of 9 rooms was going on for 1 ½ years as is being claimed by PW. 4 Yuvraj. This witness is not telling truth before the Court and the defence version that since he had an affair with Mohini and as her marriage was performed with the help of the accused, he had grudge and therefore he had falsely implicated the accused in the present crime, appears to be more probable.

17. PW. 5 Jyoti Lade is daughter of deceased Malan and sister of PW. 3 Anjali. She has given evidence on similar lines as that of Anjali. She has also admitted that accused Samapt and his wife took her mother to hospital. Even her statement is full of omissions and contradictions, same like PW. 3 Anjali. The evidence of PW.5 Jyoti, therefore in our considered opinion it is of no help to the prosecution.

18. PW. 6 Sudhir Thorwade is the neighbour of Lade family. He states that on 12th November, 1993 at about 3.50 pm Jyoti came and told him that mother was burnt by the accused and when he reached to the spot of incident, he saw that accused persons were taking Malan in a rickshaw. He also accompanied them in rickshaw. While going to hospital, Malan was saying to Sampat that, for money and ornaments he has done wrong thing. While she was shouting accused No. 1 Sampat and No. 2 Shankar put their hands on her mouth.

19. In cross, he admitted that Malan was conscious when she was admitted in hospital. He feigned ignorance as to whether Malan told Doctor that she sustained accidental burn injuries while filling kerosene in the stove. He did not go to the police station. Though he happens to be witness to the spot panchanama (Exhibit 24) which was prepared on the very next day of the incident, he did not disclose to the police at the time of preparation of panchanama about the disclosure by Malan and gagging of her mouth by accused Nos. 1 and 2. The evidence of this witness does not help to the prosecution case and his version appears to be doubtful.

20. PW. 7 Malti Dupate states that on hearing commotion on the date of incident, she went to the house of accused and found Malan in burnt condition at the door of the accused. She allegedly heard shouts of Malan that "Sampat, you burnt me for money and ornaments". In cross PW. 7 Malti admitted that the house in which the accused resides was purchased by the accused from her step mother in law. This witness and others were persuading the step mother in law not to sale the house. As the house was sold to the accused, this witness was required to leave the said house and stay elsewhere. Since then this witness was not on talking terms with the step mother in law and accused. She admits that people had

gathered near the house of the accused when she came out of the house and at that time, when she saw Malan was being removed to the rickshaw. This witness did not make inquiries about Malan then. Thus it is clear that this witness had grudge against the accused and she had every reason to implicate the accused. Hence, no reliance can be placed on evidence of this witness.

21. PW. 8 Prabhakar Thorwade who stays near the house of the accused. He states that on hearing commotion on the date of incident, he went running and found Malan in burnt condition. He also claims to have heard shouts of Malan that Sampat set her on fire on the ground of money and ornaments.

He admitted in the cross examination that he went at the spot where people had already gathered and rickshaw came there. He did not talk to anybody after going to the spot of incident. He did not go to police on that day or on the next day. This witness since he is related with PW. 7 Malti being son of Malti's maternal uncle, was interested in implicating the accused persons in the crime. No reliance can be placed on the evidence of this witness.

22. PW. 9 Krishnarao Vaghmode is the investigating officer who has proved the omissions and contradictions from the evidence of witnesses. He admitted to have received dying declaration of the deceased. A carbon copy of which was marked as Exhibit 41. In Exhibit 41 deceased Malan has stated before the Executive Magistrate that at the house of the accused she accidentally caught fire at the time of filling kerosene in the stove. Accused Sampat extinguished the fire by putting quilt on her person. In his evidence, the requisition letter for recording dying declaration sent to Executive Magistrate by the investigating officer is brought on record at Exhibit 41/2.

23. On careful consideration of the evidence on record, it is clear that prosecution has failed to prove the motive. There is unexplained delay in lodging the complaint. The investigating officer has categorically denied that Anjali came on earlier day and tried to lodge complaint. The suppression of dying declaration of the deceased Malan recorded by the Executive Magistrate (Exhibit 41) as well as non production of medical case papers and non examination of medical officer renders the oral dying declaration, so also the entire prosecution version doubtful. For withholding the medical case papers or non examination of medical officer as well as the Executive Magistrate who recorded the dying declaration (Exhibit 41), adverse inference needs to be drawn against the prosecution under section 114(g) of the Evidence Act. In the facts of the present case, it can be gathered that since the medical case papers and dying declaration were not proved, the prosecution version can be said to be untrustworthy. On the contrary, these documents were suppressed by the prosecution. Admittedly, the accused persons were not present while recording the dying declaration (Exhibit 41). Thus, there was no possibility of influencing the said dying declaration (Exhibit 41).

24. In the light of dying declaration (Exhibit 41), the oral dying declarations are

not reliable and taking into consideration the conduct of the prosecution witnesses and omissions proved on record, the version of the witnesses in respect of oral dying declarations of Malan is unreliable and cannot be believed. As has been observed hereinabove, PW. 7 Malti and PW.8 Prabhakar, since PW. 7 Malti had grudge against the accused persons, she had every reason to falsely implicate the accused. PW. 8 being son of her maternal uncle, was also interested to see that the accused persons are implicated. Hence, evidence in respect of oral dying declarations is not worthy of credit.

25. Unnatural conduct of the prosecution witnesses particularly daughters of the deceased i.e. PW. 3 and 5 and the alleged eye witness PW. 4, so also the other prosecution witnesses claimed to have heard the oral dying declaration of the deceased needs to be noted. The daughters of the deceased as well as her husband did not care to go or wait at the hospital in the night when deceased was undergoing treatment. They did not go and lodge complaint when they were claiming that Malan was shouting that Sampat immolated her. PW. 4 Yuvraj though is acquainted with the family of the deceased since last 15 years, also did not disclose the incident of burning of Malan, to her family immediately, so also to his co-workers or to his family members. He does not go to the police to inform about the said incident. Belated recording of his statement and his conduct after the incident and the defence version that he had an affair with Mohini and admission on his part that still he meets Mohini, probabilise the defence version that due to previous grudge PW.4 Yuvraj implicated the accused persons. The entire prosecution version is doubtful and is un-acceptable.

26. At the cost of repetition it is necessary to state here that PW. 4 Yuvraj, an alleged eye witness has admitted that the passage leading to the house of the accused ends at the house of accused. There is no door on the North side to the house of the accused. Thus the house of the accused is situated at the end of blind alley. Considering the admissions and omissions in the evidence of this witness, it is apparent that this witness is unworthy of credit and cannot be believed at all.

27. After analyzing the evidence of prosecution witnesses, it is clear that there is nothing on record to sustain the charge levelled against the accused persons. The learned trial Court has given proper reasoning and has rightly acquitted the accused persons. The view taken by the learned trial Court while acquitting the accused persons is the only possible view in the present case and no other view is possible. There is no merit in the Appeal filed by the prosecution. Hence, the following order.

28. The Appeal is dismissed with no order as to costs.

29. Bail bond of the Respondents/accused if any, shall stand cancelled.