
(2012) 09 BOM CK 0078
In the Bombay High Court
Case No : Criminal Appeal No. 179 / 2010

Suresh Bagade

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2012) 09 BOM CK 0078

Hon'ble Judges : P.V. Hardas, J;M.L. Tahaliyani, J

Bench : Division Bench

Advocate : S.M. Nafde, for the Appellant; A.S. Sonare, APP for State, for the Respondent

Judgement

M.L. Tahaliyani, J.—The appellant has questioned the judgment and order passed by the learned Additional Sessions Judge, Nagpur in Sessions Trial No. 457/2006. The appellant has been convicted for the offence punishable u/s. 302 of the Indian Penal Code and is sentenced to suffer imprisonment for life and to pay a fine of Rs. 5000/-in default to suffer simple imprisonment for one year. The appellant had allegedly committed murder of his brother's wife by setting her on fire after pouring kerosene on her. There was a dispute between the deceased and the appellant on account of ancestral property. It is alleged that the appellant frequently used to quarrel with his father, brother and deceased-Sunita, who was the wife of his brother, namely, Shankar. The incident in question had occurred on 1st September, 2006 at about 10.30 or 11.00 am. The appellant and his brother-Shankar had their residential accommodations in the same premises. Both of them had a separate accommodation. It appears from the prosecution case that there was a common bath-room for both the families. The deceased was proceeding towards bath-room for bath. It was around 10.30 a.m. The appellant had allegedly quarreled with the deceased and had poured kerosene on her and had set her on fire. Deceased-Sunita was immediately rushed to Mayo Hospital and was admitted for treatment. She succumbed to the injuries on 5th September, 2006 at about 9.30 a.m. There was no eye witness to

the incident. The case of the prosecution is based on two dying declarations of the deceased - one recorded by the Investigating Officer and the other recorded by the Special Judicial Magistrate.

2. The FIR was recorded at about 20.45 hours on the basis of statement of the deceased recorded by the Investigating Officer. The FIR was for the offence punishable u/s. 307 of the IPC. During the course of investigation, spot panchnama was drawn, sketch of the spot was also drawn. The articles found in the kitchen of deceased were seized and seized articles were sent to the Chemical Analyser. Since the deceased died on 5th September, 2006, Section 302 of the IPC was applied and further investigation was carried out. During the course of further investigation dead body was sent for post-mortem examination. The Medical Officer after examination of dead body, had opined that the deceased had died due to "scepticemia due to burn injuries". After completion of investigation, charge-sheet was filed in the Court of learned Judicial Magistrate. The case came up for hearing before the learned Additional Sessions Judge after committal of the case. Charge u/s. 302 of IPC was framed against the appellant vide Exh. 5. The appellant had pleaded not guilty and had claimed to be tried. The plea of the appellant is at Exh. 6.

3. During the course of trial, the prosecution had examined in all 13 witnesses in support of its case. However, the judgment is mainly based on the dying declarations of the deceased recorded by PW9-Devanand Alone, Police Sub-Inspector and dying declaration recorded by PW10-Sunil Rawan Hate, the Special Judicial Magistrate. The dying declaration recorded by PW 9 is at Exh. 27 and the dying declaration recorded by PW 10 is at Exh. 33.

4. The evidence of prosecution witnesses can be summed up in the following manner : PW1-Ashwin Tagde is a Panch witness who was present at the time of spot panchnama. The spot panchnama is at Exh. 12 According to this witness, burnt pieces of saree, one pillow, burnt pieces of blouse and other articles were seized under the panchnama. The seizure memo is at Exh. 13. The sketch map of the spot of the incident was also drawn in the presence of this witness. The said sketch map is at Exh. 14.

5. PW 2-Nagorao Waibhat, according to prosecution, was present when a pot of kerosene was allegedly seized on the basis of statement made by the appellant in police custody. This witness has admitted his signature on the memorandum of the statement of the appellant and the seizure panchnama but has not supported the prosecution case in other material particulars. The memorandum of statement of the appellant and the seizure panchnama are at Exh. 15/1 and 15/2.

6. PW 3-Sau. Nanda, is the mother of the deceased. She had reached the hospital immediately after she came to know that her daughter has been admitted to Mayo Hospital. It is stated by this witness that deceased-Sunita had made a statement before her that she was set on fire by the appellant after pouring kerosene on her.

7. PW4-Dashrath is the Panch witness. He was hostile to the prosecution. It was the case of the prosecution that the deceased had made an oral dying declaration to PW 5 Sau. Shobha implicating the appellant. However, PW 5-Sau. Shobha did not support the prosecution case and was declared hostile.

8. PW 6-Shankar is the husband of the deceased. He was not at home at the time of the incident. He was getting his bicycle repaired in the Cycle Repairing Shop. He came to know about the incident when he was in the said shop. It is stated by him that he came to know that his wife had sustained burn injuries. He, therefore, rushed to the Mayo Hospital. According to this witness, his wife deceased-Sunita had made a statement before him that the appellant had set her on fire after pouring kerosene on her.

9. PW 7-Dr. Rameshwar Kokurde is the Medical officer who has described the burn injuries sustained by the deceased and has opined that the deceased had died due to septicemia following burn injuries. PW 8 is the Panch witness in whose presence the Inquest Panchnama of the dead body was drawn. PW 9 is the Police Officer who was on duty at Kalmeshwar Police Station on 1st September, 2006. He received information from the police outpost of Mayo Hospital that one lady by name Sunita, had been admitted in Ward No. 3 for treatment of her burn injuries. He, therefore, rushed to the hospital and recorded the statement of the deceased after obtaining a fitness certificate from the Medical Officer. The deceased had stated before him that she was set on fire by the appellant after pouring kerosene on her. He had recorded the FIR for the offence punishable u/s. 307 of IPC on the basis of statement of the deceased. PW 10 is the Special Judicial Magistrate. He had recorded the statement of the deceased vide Exh. 33. This statement was in "question-and-answer form". The deceased had stated before him that she was set on fire by the appellant after pouring kerosene on her. This witness had taken a fitness certificate from the Medical Officer and had also satisfied himself that the deceased was in the condition to make a coherent statement.

10. PW 12-Raghunath Mahure was working as Police Sub-Inspector at Kalmeshwar Police Station. He had drawn a spot Panchnama and the sketch map. PW 13 was working as Head Constable. This witness was examined to establish that there used to be frequent quarrels between the appellant and the deceased and that the appellant had extended threats to the deceased in the past also.

11. Statement of the appellant was recorded after completion of evidence. The appellant had contested the case of prosecution and had stated before the learned trial Court that he did not know anything about the alleged incident and he himself was not able to follow as to why he had been implicated in the present case.

12. We have gone through the impugned judgment of the trial Court. It is seen from the judgment that the correctness of both the dying declarations was questioned during the course of arguments and it was brought to the notice of

the learned trial Court that the actual incident had not occurred in the bath-room or on the way to the bath-room. It was also brought to the notice of the learned trial Magistrate that PSI-Raghunath Mahure (PW 12), in his cross-examination, had admitted at paragraph 9 that the spot was shown by Fulabai, mother of the deceased. He had seen the kerosene lamps in question lying on floor in the kitchen of the deceased. The kerosene lamps and sample of soil were seized from the spot. It appears that it was argued before the learned trial Court that the deceased had committed suicide by pouring kerosene on herself and by setting herself ablaze. She had come out of her house after setting herself ablaze.

13. It was also brought to the notice of the learned trial Judge that the PW 6, who is the husband of the deceased, got intimation that his wife had sustained burn injuries. It is not stated by him that he was informed that his wife was set on fire by his brother. It was argued by the counsel for the appellant that had the appellant set the deceased on fire, PW 6 would have received intimation not in the form stated by him. It was further argued before the learned trial Court that PW 6 did not bother to inform Kalmeshwar Police Station while the deceased was being brought to Mayo Hospital from Kalmeshwar. Nobody from the family members had informed the police regarding the incident in question. The mother of the appellant was present at home at the time of the incident. She has not been examined by the prosecution for which there was no plausible explanation. The FIR had been registered after about 12 hours of the incident. It was, therefore, argued that the case has been concocted against the appellant by PW 6 as there was a quarrel over the ancestral property.

14. The learned trial Court, however, was not impressed by the arguments and was of the view that there was an unimpeachable evidence in the form of dying declarations of the deceased and that both the dying declarations could be relied upon for convicting the appellant for the offence punishable u/s. 302 of IPC.

15. The arguments submitted before the trial Court were repeated before us by the learned counsel for the appellant. Our attention was drawn to the evidence of PW 12 and the sketch map and it was submitted that PW 12 has admitted in his cross-examination that the lamps and sample soil were collected from the kitchen of the deceased. It was argued that it is sufficient indication of the fact that the incident of pouring kerosene and setting on fire had occurred in the kitchen and not on the way to bath-room.

16. We have given our anxious consideration to this part of the arguments and we have gone through the evidence of PW 12 and we have read the sketch map. It is very clear from the sketch map that the kitchen of the deceased is far away from the bath room. The evidence of PW 12 does not make it clear as to where exactly the incident had occurred. We have also gone through the evidence of PW 9 and 10. We may reproduce the relevant portion of evidence of PW 9 - the Investigating Officer who had recorded statement of the deceased, which runs as under :

... Suresh Bagde poured kerosene on her person and set her on fire on account of previous dispute. She also told that there used to be a quarrel between herself and Suresh and therefore Suresh set her on fire. The statement now shown to me is the same. It bears the signature of Sau. Sunita Bagde and my signature. Sunita signed in my presence.

We may also reproduce the relevant portion of the evidence of PW 10, as under :

... On further questioning Sunita told that her husband had gone to escort her children in the school and father-in-law had gone in the land and she kept water for bathing in the bathroom and was proceeding towards bathroom with her clothes and at that time Suresh Bagade came from the house with pot of kerosene and poured kerosene on her shoulder and below and threw lite match stick on her person and ran away towards his room. Sunita caught fire due to such act of Suresh and she undressed her saree and ran towards the houses where some ladies were there and one of the lady extinguished the fire with the help of Wakal and Sunita sat there. On further questioning Sunita told that her father-in-law and husband came and took her to Kalmeshwar hospital and after getting some treatment there she was admitted in Mayo Hospital as told by doctor.

17. As such, the deceased had told PW 10 that she was set on fire when she was proceeding towards bathroom. Therefore, it was the duty of the prosecution to explain as to where exactly the incident of setting the deceased on fire had occurred. If the evidence of PW 10 is to be believed there was no point in collecting kerosene lamps and soil sample from the kitchen of the deceased. It is not the case of the prosecution that the appellant had collected kerosene from the kitchen of the deceased. On the contrary, it is the case of the appellant that the deceased had set herself on fire.

18. No doubt, in a given case, dying declaration can be the sole basis of conviction. However, there might be cases where the Court may search for corroboration and in the absence of corroboration, the Court may decline to record conviction on the basis of dying declaration only. In this regard, useful reference can be made to the judgment of the Hon"ble Apex Court reported at Ongole Ravikanth Vs. State of A.P., . The relevant portion of the judgment is at paragraphs 28 and 29, which runs as under :

28. It is well settled and needs no restatement at our hands that the dying declaration can form the sole basis for conviction. But at the same time due care and caution must be exercised in considering weight to be given to the dying declaration inasmuch as there could be any number of circumstances which may affect the truth.

(Emphasis supplied).

19. In the present case, what is pertinent to note is that the burn injuries are on the upper front limbs which are indicative of the fact that the kerosene might

have been poured by the deceased herself. PW 2 had taken sample soil from the kitchen and had seized kerosene lamps from the same place. This also indicates that the incident in question had taken place in the kitchen and that it is indicative of suicidal death. Apart from this, though the mother of the appellant (mother-in-law of the deceased) was present at the time of incident she has not been examined for which there is no explanation. It has also come on record that the father-in-law of the deceased had arrived soon after the incident. If the oral dying declaration was made by the deceased before her husband-PW 6, the same statement must have been made before her father-in-law also. The prosecution has not given any cogent explanation as to why parents-in-law of the deceased who are parents of the appellant, have not been examined. Non-examination of these two witnesses gives sufficient scope to doubt the correctness of the dying declarations recorded by PW 9 and 10. The nature of burn injuries also gives rise to the doubt with regard to correctness of the statements made by the deceased to PW 9 and 10. We have already taken note of the nature of intimation received by PW 6. The evidence of PW 6 in that regard, clearly indicates that he was not intimated that his wife had been set on fire by his brother. He was intimated that his wife had sustained burn injuries.

20. It was suggested to PW 6 that the deceased had a suicidal tendency. It was specifically put to PW 6 that the deceased had, in the past, attempted to commit suicide by jumping into well. The record of evidence shows that PW 6 had taken a lot of time to answer this question. It was argued before the learned trial Court that a long pause on the part of PW 6 indicates that the deceased had attempted to commit suicide and she had suicidal tendency. Though this argument was rejected by the learned trial Court, we find much substance in the argument in the view of the other circumstances surrounding the incident. In fact, evidence of the I.O. gives clear impression that the deceased had sustained injuries in the kitchen. Kerosene laps might have been used to pour kerosene on herself. In brief, we have come to the conclusion that there was strong possibility of the deceased committing suicide. The dying declarations recorded by PW 9 and 10, in fact, needed corroboration from other evidence. The cross-examination of PW 6 and 12 and delay in lodging the FIR, create a reasonable doubt in our mind about correctness of the prosecution case. The possibility of deceased committing suicide cannot be ruled out. It is an admitted position that there was a dispute between PW 6 and the appellant over the property issue. Therefore, there was possibility of false implication. The benefit of doubt, therefore, must go to the appellant. We, therefore, pass the following order :-

ORDER:

Criminal Appeal No. 179/2010 is allowed and the conviction and sentence of the appellant is hereby quashed and set aside and the appellant is acquitted of the offence with which he was convicted and sentenced. Fine, if paid by the appellant, be refunded to him.