
(1998) 04 BOM CK 0046
In the Bombay High Court
Case No : Criminal Appeal No. 305 of 1993

Thakurdas

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-04-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 294, 313
Penal Code, 1860 (IPC) — Section 302

Citation : (1999) CriLJ 867 : (1999) 1 MhLj 370

Hon'ble Judges : J.A. Patil, J;G.D. Patil, J

Bench : Division Bench

Advocate : M.R. Daga, for the Appellant; D.B. Yengal, Addl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

J.A. Patil, J.—This appeal by the original accused is directed against the judgment and order dated 10-3-1993 passed by the Additional Sessions Judge, Nagpur in Sessions Case No. 542/91. The learned Judge convicted the accused of the offence punishable u/s 302 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs. 200/- i/d to suffer further R.I. for two months. Feeling aggrieved thereby, the accused has come in appeal.

2. The deceased Devibai was the wife of the accused. Both of them were living together along with (heir son Prakash PW-1 and two daughters, namely, Sonu and Vinu (PW-2) in Quetta Colony, Nagpur. According to the prosecution, the accused was unemployed and he was doing no work. He was addicted to the vice of drinking and he often used to harass and beat his wife Devibai. On some occasions he had even driven her out of the house. It appears that Devibai was working in a private hospital. Prakash was also working in a liquor shop.

3. The incident in question took place in the afternoon of 15-3-1991. On that day, Prakash had already left the house in the morning to attend his service. The

accused and his wife Devibai were present in the house. Vinu PW-2 who was then studying in the sixth standard, returned home at about 10.30 a.m. Thereafter at about 12 noon the elder daughter Sonu left for the school. It is alleged that on that morning there was a quarrel between the accused and Devibai. The accused had consumed liquor and he was giving threats to kill Devibai. Vinu, realising that the accused was under the influence of drink advised her mother Devibai to keep quiet. It is further alleged that the accused started burning his own clothes and thereafter he repeated his threats to kill Devibai. Devibai prepared the meals and asked Vinu to take her food. Vinu, however, told her that she would not take her meals unless the mother had also taken her food. Devibai, however, advised her to take the meals and do her study. Thereafter Devibai went in the verandah and slept there on a chaddar. In the meantime the accused beat Vinu and repeated his threat to kill Devibai. It appears that thereafter Vinu left the house and started going to the house of one Punjabi who resides beyond two houses. According to the prosecution, the accused in the meantime poured kerosene on Devibai and set her on fire. Thereafter he followed Vinu and told her "I have burnt your mother, don't put out the fire." Vinu, however, turned back and rushed in the house. She found that her mother was on fire. She then gave shout in the name of her mother and thereafter poured some water on her to put out the fire. The accused had by that time left the house.

4. Vinu then rushed to the liquor shop where her elder brother Prakash was working and disclosed to him that the accused had set their mother on fire and also the fact that he had made a confession to her to that effect. Prakash then rushed to his house and found that his mother Devibai was lying dead in the verandah of the house. Thereafter he went to the Lakkadganj police station and lodged his report Exh. 16. On the basis of that report, P.S.I. Borole PW-4 registered the case as C.R. No. 140/91 u/s 302, of I.P. Code and immediately visited the house of the accused. He found the dead body of Devibai lying in burnt condition in the verandah of the house. He then drew the inquest panchanama Exh. 7 as well as the spot panchanama Exh. 6. He found that a tin containing two litres of kerosene and a match box were lying near the dead body. Both the articles were seized under the panchanama. P.S.I. Borole also arranged to take the photographs of the dead body and articles found lying in the verandah. After doing that he sent the dead body of Devibai to the Mayo Hospital for post-mortem examination. The Medical Officer carried the post-mortem examination on 16-3-1991 and noticed 87% of burn injuries on the dead body of Devibai. It was also found that the body surface was giving a smell of kerosene. The cause of death was opined as shock due to burns. When PSI Borole returned to the police station after completing the inquest panchnama and spot panchnama, he found that the accused had come there. According to him, the accused disclosed to him to have committed the offence in question. PSI Borole then arrested him. He seized the clothes on the person of the accused as they were smelling of kerosene. In the course of the investigation, all the seized

articles were sent to the chemical Analyser. The C.A. detected residues of kerosene on the shirt of the accused along with other articles. After completing the investigation, PSI Borole filed charge-sheet against the accused on 29-5-1991 in the Court of Judicial Magistrate First Class, Nagpur who later on committed the case to the Sessions Court for trial.

5. The learned Additional Sessions Judge charged the accused for the offence u/s 302 of the I.P. Code. The accused pleaded not guilty and denied to have set his wife Devibai on fire. He also denied to have made any confession to his daughter Vinu. According to him, Devibai committed suicide by setting herself on fire. In his statement u/s 313 of the Criminal Procedure Code, the accused tried to explain that kerosene might have fallen on his clothes when he tried to snatch the kerosene tin from the hands of his wife Devibai. The accused did not lead any evidence in his defence nor did he examine himself on oath.

6. In support of its case, the prosecution examined four witnesses, namely, Prakash PW-1, Vinu PW-2, Ramchandra Nafade PW-3 who recorded the statement of Vinu u/s 164 of the Criminal Procedure Code and PSI Borole PW-4 who carried the investigation of the case. In addition to the oral evidence, the prosecution also produced a number of documents some of which were exhibited u/s 294 of the Criminal Procedure Code with the consent of the defence. The learned Judge upon consideration of the evidence on record found the evidence of Vinu acceptable. He further held that the accused made an extra judicial confession to Vinu and the same is voluntary and true. The learned Judge further observed that there is no evil motive in the mind of Vinu to implicate her own father in the case. The learned Judge found that the evidence of Vinu was corroborated by certain circumstances. In this view of the matter, he held that the death of Devibai was homicidal and it was caused by the accused. Accordingly, he convicted and sentenced the accused.

7. Shri M.R. Daga, the learned Counsel for the appellant/accused submitted that the learned Judge was in error in relying upon the extra-judicial confession of the accused as there is no corroborative evidence. Shri Daga submitted that extra-judicial confession is a weak type of evidence and in the instant case the same is retracted by the accused. He pointed out that PW-1 Prakash is silent on the point that Vinu PW-2 disclosed to him the extra-judicial confession of the accused. Shri D.B. Yengal, the learned Additional Public Prosecutor for the State, supported the order of conviction and sentence and pointed out that kerosene was found on the shirt of the accused.

8. The evidence of PW-4 PSI Borole coupled with the inquest panchnama Exh. 7 shows that immediately after recording the complaint of Prakash, he visited the house of the accused in the same afternoon and found the dead body of Devibai lying in burnt condition in the verandah of the house. It appears that the dead body was thereafter sent to the Mayo Hospital for postmortem examination which was carried on the next day. The prosecution has produced the P.M. report at Exh. 33-A and it shows that the deceased had received 87% of burn injuries

and that her body surface was smelling of kerosene. The burn injuries were found to be ante-mortem. The Medical Officer opined the probable cause of death as being shock due to burns. There is no dispute of this fact. According to the prosecution, it was the accused who caused the death of Devibai by setting her on fire. The accused, on the other hand, has contended that Devibai committed suicide.

9. There is no direct evidence regarding the actual commission of the offence. The only material evidence adduced by the prosecution and accepted by the learned trial Judge is in the form of extra-judicial confession said to have been made by the accused to his daughter Vinu PW-2 immediately after the incident. The evidence of Vinu PW-2 is to the effect that she returned home from the school at about 10 a.m. and found that there was a quarrel between the accused and her elder sister Soni. She further stated that at about 12 noon Soni went to school and thereafter there was a quarrel between the accused and her mother. Vinu has stated that the accused had consumed liquor and that he was giving threats to kill her mother. She also stated that the accused started burning his own clothes and repeating the threats to kill her mother. The evidence of Vinu further shows that her mother Devibai prepared the meals and went to sleep in the verandah of the house. She has also stated that the accused beat her (Vinu) and threatened to kill her mother. It is not clear from the evidence of Vinu as to whether she took her meals. However, it appears that she started going to the house of one Punjabi. Her evidence, shows that at that time the accused and deceased Devibai alone were present in the house. It was soon after Vinu left the house that the incident in question appears to have taken place. Vinu, however, does not say that she heard the noise and shouts of her mother. According to her, when she was about to enter the house of Punjabi, the accused followed her and told that he had burnt her mother and asked her not to extinguish the fire., It was only thereafter that Vinu turned back and rushed to her house to find that her mother was on fire and struggling with pains. The evidence of Vinu does not show that any other person particularly the neighbouring persons also rushed to the spot. In the cross-examination, Vinu admitted that the accused had consumed liquor excessively but she denied that due to heavy drinking he was not in senses. She also denied the suggestion that when the accused met her on the road, he told her that her mother had burnt herself.

10. It is seen from the evidence of Vinu that her statement was also recorded by the Special Judicial Magistrate. The prosecution has examined the Special Judicial Magistrate Ramchandra Knifed PW-3 who stated that he recorded the statement of Vinu u/s 164 of the Criminal Procedure Code on 30-4-1991 as per her say. The said statement is produced at Exh. 18 wherein also Vinu has referred to the extra-judicial confession made by the accused to her immediately after the incident.

11. The learned Judge has accepted the evidence of Vinu on the point of extra-judicial confession made by the accused. The reasons assigned by him for

accepting the said evidence is that the circumstances stated by Vinu preceding the incident go to corroborate her version. Secondly, Vinu being related both to the deceased and the accused, had no reason or a motive to State a false thing against the accused. The third reason given by the learned Judge is the conduct of the accused in not making any attempt to put out the fire on the person of Devibai. According to the learned Judge, if Devibai had committed suicide by setting herself of fire, then the accused would have certainly made attempt to put out the fire. He further pointed out that at the relevant time the accused was alone in the house and as such he had the opportunity of committing the offence in question.

12. The evidence of extra-judicial confession is usually considered to be a weak piece of evidence and it is not considered safe to be relied upon unless there is corroborative evidence. Shri Daga relied upon the decision in, *Uttarn Sadda v. State of Punjab* 1993 SCC 1020 : 1993 Cri LJ 2597, wherein it was held that extra-judicial confession- made by the accused cannot be accepted in the absence of corroborative evidence. In that case, the extra-judicial confession was retracted by the accused and the trial Court had not extracted details of the said confession. Shri Daga pointed out that in the instant case the accused while replying to question No. 26 in his statement u/s 313 of the Criminal Procedure Code has retracted the alleged extra-judicial confession made by him to Vinu. Shri Yengal, the learned Additional Public Prosecutor, relied upon the decision in, *Narayan Singh and Others Vs. State of M.P.*, wherein it was observed at P. 1864 of Cri LJ:

It is not open to any Court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend upon the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession.

It is material to note that the said decision does not lay down that the extra-judicial confession can be relied upon in the absence of corroborative evidence. In the said case besides the extra-judicial confession, there was direct evidence of an eye-witness and also circumstances evidenced in the nature of discovery of blood stained weapons recovered at the instance of the accused. It was on the basis of all this evidence that the Supreme Court upheld the conviction and sentence imposed upon the accused. In *Kashinath Krishna Jadhav Vs. State of Maharashtra*, the facts were that the accused had himself told witnesses that he had killed the deceased. The witnesses did not have any animus against the accused. There was another witness who stated that he had seen the accused coming armed with knife towards him in a threatening mood. The accused himself admitted to have run after the witness. The extra-judicial confession made by the accused was further found to have been corroborated by the presence of blood stains on his clothes and the recovery of blood stained knife from him. Considering all this evidence coupled with the extra-judicial confession the Supreme Court confirmed the conviction of the accused. The

above authorities are, therefore, sufficient to indicate the settled law that extra-judicial confession cannot be accepted without there being any corroborative evidence. In, *Heramba Brahma and Another Vs. State of Assam*, , the Supreme Court referring to its earlier decisions pointed out that extra-judicial confession to-become a piece of reliable evidence must pass the test of reproduction of exact words, the reason or motive for the confession and the person selected in whom confidence is reposed. Bearing in mind this position of law regarding the evidentiary value of extra-judicial confession, we now proceed to examine whether and how far the extra-judicial confession made by the accused is corroborated by any other evidence.

13. So far as the making of confession by the accused is concerned, there is no corroborative evidence. The evidence of Vinu PW-2 is to the effect that after the accused made the confession to her, she rushed home and found her mother on fire. According to her, she put out the fire by pouring buckets of water on her and thereafter she rushed to her brother Prakash to call him. It may be recalled that Prakash PW-1 was at that time present in the liquor shop which is situated in Adamshah chowk at a distance of about half a kilometer from his house. According to the prosecution Vinu PW-2 disclosed to him the fact that the accused had made a confession admitting that Exh. 16 lodged by Prakash in the same afternoon makes a reference to the confession of the accused to Vinu, he does not say anything to that effect. All that he has stated is to the following effect:

At about 2 p.m. my younger sister Vinu came to liquor shop and told me that my mother was burnt.

Therefore, I went to the house....

Relying upon this fact, it was contended by Shri Daga that the alleged extra-judicial confession of the accused stands uncorroborated and as such, the same cannot be accepted. It is true that Prakash PW-1 is totally silent on the point of disclosure by Vinu regarding the confession of the accused. However, at the same time, it is material to note that there is no positive statement made by him indicating that Vinu did not disclose to him about any confession made by the accused. In the cross-examination, he specifically denied the defence suggestion that Vinu told him that the mother had set fire to herself and that the father (accused) had gone to lodge a report to the police station. The mere fact that the evidence of Prakash PW-1 is silent on the point of confession of the accused does not mean that Vinu had not at all disclosed the same to him. Otherwise there was no occasion and reason to find a reference in the FIR Exh. 16 to the disclosure of confession made by Vinu.

14. We have carefully examined the evidence of Vinu PW-2 and we find that there are certain facts stated by her which have not been challenged and those facts lend sufficient corroboration to material particulars of the confession which she claims to have been made by the accused. The first fact is that prior to the

incident, the accused had a quarrel with his wife Devibai and he had given threats to kill her. The second fact seen from Vinu's evidence is that the accused beat her and made her to leave the house. At that time, the deceased was sleeping and the accused was alone in the house. Thus, the accused had an opportunity to commit the alleged offence. The third circumstance is that the accused does not appear to have made any attempts to put out fire on the person of his wife Devibai. The fourth circumstance is that residues of kerosene were found on the shirt of the accused which was seized on the same day after he had gone to the police station. It is true that Vinu has stated that the accused was drunk and that he had tried to burn his clothes sometimes before the incident. However, Vinu does not say that the accused poured kerosene on his own clothes and tried to burn them. In his statement u/s 313 of the Criminal Procedure Code the accused tried to explain the kerosene detected on his shirt by stating that he had tried to snatch the kerosene tin from the hands of his wife. However, he has nowhere stated in his statement nor was it suggested to Vinu that the accused had made any attempt to save the deceased either by trying to snatch the kerosene tin from her hands or by trying to put out the fire on her person. The evidence of Vinu shows that it was she who alone threw water on her mother to put out the fire. The learned trial Judge has referred to all the above-mentioned circumstances and pointed out that they corroborate the material particulars of the confession.

15. On a careful consideration of the above-mentioned circumstances, we are of the opinion that they lend sufficient assurance to the version of Vinu that the accused had made a confession to her and that they also corroborate material particulars of the confession. We find that the evidence of Vinu is absolutely reliable. Although she has admitted that she was not in good terms with the accused that does not mean that she had told a lie. Vinu is a girl who was at the relevant time studying in the sixth standard. The conduct of the accused to drink liquor and harass her mother must have made Vinu to hate him. However, we find that she has narrated the whole story in a most natural manner. She has stuck to the same version even in her statement u/s 164 Exh. 18 which was recorded on 30-4-1991. There is no reason to believe that Vinu was deposing under the pressure of her elder brother Prakash. We thus find that the learned Judge was right in accepting the evidence of Vinu. He was also right in holding that the accused had voluntarily made an extra-judicial confession to Vinu and that the same was corroborated in material respects. We, therefore, do not see any error on the part of the learned Judge in holding the accused guilty of the offence of committing murder on his wife Devibai.

16. In the result, we dismiss the appeal and maintain the order of conviction and sentence passed by the learned trial Judge.