

(2022) 11 BOM CK 0033

In the Bombay High Court

Case No : Criminal Appeal No. 513 Of 2015, Interim Application No. 1428 Of 2021

Vikram Rajaram Chourasiya

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 14-11-2022

Acts Referred:

Indian Penal Code, 1860 — Section 302
Code Of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 32, 60

Citation : (2022) 11 BOM CK 0033

Hon'ble Judges : A.S. Gadkari, J;Milind N. Jadhav, J

Bench : Division Bench

Advocate : Aisha Mohammad Ansari, H. J. Dedhia

Final Decision : Dismissed/Disposed Of

Judgement

Milind N. Jadhav, J

1. This Appeal challenges the legality of the Judgment and Order dated 05.02.2015 passed by learned Additional Sessions Judge, Nashik, in Sessions Case No.219 of 2013, convicting Appellant for offence punishable under Section 302 of the Indian Penal Code, 1860 (for short "IPC") and sentencing him to suffer imprisonment for life and to pay fine of Rs. 1000/-, in default, to suffer further imprisonment for one month.

2. Shorn of unnecessary details, facts which emerge for consideration are as follows:

2.1. Appellant has been convicted for murder of Laxmi Mukunda Bangad (hereinafter to be referred as "Laxmi"). Appellant considered Laxmi as his sister and used to accompany her whenever needed. Laxmi was working as a trainee nurse in Siddhivinayak Hospital, Nashik.

2.2. On 26.03.2013 at around 9:00 p.m., Appellant asked Laxmi to accompany

him on his motorcycle to meet his friend at village Kulwandi. After travelling some distance on Harsul – Pate road, they stopped by the fields for rest near a culvert. He asked Laxmi to wait by the roadside as he went to answer nature's call. He returned back with a knife in his hand. He took Laxmi to a nearby hut in the field and asked her to rest as they had travelled some distance. He told her that the knife was sharp and he was capable of committing murder and threatened her not to ask questions or he would kill her with the knife. Laxmi got infuriated with his behavior and asked him to demonstrate how he would assault with the knife. Appellant reacted by assaulting Laxmi with the knife (Article-3) and inflicted three blows on her neck resulting in severe injuries. He ran away from the spot of incident, leaving Laxmi in the hut in an unconscious state.

2.3. On 27.03.2013, Laxmi regained consciousness and walked to a nearby home of Hariman L. Jadhav (PW-3) and sought help. PW-3's wife spotted her and accordingly informed PW-3. He called PW-1, Police Patil Pandurang Malekar of village Harsul to the spot. On receiving information from PW-1, PSI Gaikwad alongwith his staff rushed to the spot of incident in his jeep. Laxmi was unable to speak due to injuries, hence she gestured with hands for pen and paper and wrote down her name. She also pointed towards the hut i.e. the spot of incident. She was moved initially to Harsul hospital in the police jeep and referred to Civil hospital, Nashik on the following day for further treatment.

2.4. Spot cum seizure panchanama (Exh.55) was prepared and one scarf and blood stained soil was seized and sent to CA for report. Appellant was arrested at 21:05 hours on 28.03.2015. He led the police authorities to the spot of incident and at his instance the weapon i.e. knife used by him to assault Laxmi which was hidden by him inside the hut was recovered (Exh.22 and 24). Appellant's motorcycle and blood stained clothes were seized (Exh.32). Laxmi's blood stained clothes were also seized. On her admission to hospital, Laxmi was conscious, but unable to speak. She therefore sought for pen and paper to give her statement.

2.5. First dying declaration (Exh.16) is recorded by PW-5 Nayab Tahsildar at about 7:15 p.m. on 27.03.2013. It bears two endorsements of the on-duty doctor, one at 7:15 p.m. and the second at 7:35 p.m. (at the beginning and at the end) that states, "that patient is mentally conscious and fit to give statement". This statement is also signed by Laxmi herself.

2.6. Second dying declaration (Exh.13) is given by Laxmi in the presence of PW-4 – PSI Anjali Rajput at 9:45 p.m. on 27.03.2013. This statement is hand written and signed by Laxmi herself. It bears endorsement of the on-duty doctor which states that, "she is in a state in which she can give her statement in writing". This statement narrates the entire incident in detail resulting in the Appellant assaulting her thrice on the neck with the knife. To a specific question asked by PW-4 as to whether she was assaulted sexually, she has answered in the negative in her own handwriting at the end of the statement.

2.7. Laxmi succumbed to her injuries on 01.04.2013. PHC Mr. Shende prepared the inquest panchanama and sent her body for autopsy. PW-12 – Dr. Nareshkumar S. Bagul performed the autopsy and prepared the PM notes (Exh.36). The IO (PW-13) collected the CA Reports (Exh.61 to 63), completed investigation and filed chargesheet before the Judicial Magistrate First Class, Nashik. However, since the offence under Section 302 IPC is exclusively triable by the Court of Sessions, the case was committed to the Sessions Court.

2.8. Charge was framed (Exh.5) against Appellant. It was read out and explained to him in vernacular to which he pleaded not guilty and claimed to be tried. To bring home the guilt of the Appellant prosecution examined 13 witnesses. Appellant in his statement recorded under Section 313 specifically denied the charge and stated the he had no nexus with the incident.

3. PW-1 – Pandurang Malekar is the Police Patil of village Harsul and first informant. He informed PW-9 on phone about having spotted Laxmi in front of PW-3's hut. PW-9 – ASI Mr. Ambadas C. Jadar rushed to the spot of incident and moved Laxmi to the hospital in his jeep. PW-4 and PW-5, recorded the two statements (dying declarations) given by Laxmi separately on 28.03.2013. PW-6 and PW-8 are the father and brother of Laxmi. They both have deposed that they knew that Appellant was Laxmi's friend. Both these witnesses have recognised Laxmi's handwriting on Exh.13, the second dying declaration written by Laxmi. PW-2 and PW-7 are pancha witnesses to the spot panchanama (Exh.55) and seizure memoranda (Exh.22). PW-10 – Dr. Sunil R. Jagtap of Shree Siddhi hospital, Nashik has deposed that Laxmi was working in his hospital as a trainee nurse at the time of incident and he knew that Appellant was her friend. PW-12 – Dr. Nareshkumar S. Bagul performed the autopsy and proved the PM notes (Exh.36).

4. On perusal of Exh.13, the second hand written statement given by Laxmi, it is seen that immediately before the incident there was an altercation and quarrel between Appellant and Laxmi. Appellant questioned Laxmi that she was receiving a lot of phone calls from her male friends and she was spending a lot of time talking to them on her mobile phone. Laxmi took umbrage to his questioning her and slapped him.

5. Further both the statements i.e. Exh.13 and Exh.16 have been proved by the prosecution witnesses, they bear the endorsement as required under the law of the on duty medical doctor and thus their contents cannot be disbelieved. Both the statements clearly indict the Appellant and there is no defence available on record to disbelieve or disprove the same.

6. PW- 12 Dr. Nareshkumar S. Bagul, Medical Officer attached to the Civil Hospital, Nashik treated Laxmi from 27.03.2013 to

1. 04.2013 and conducted her post-mortem. He has endorsed both statements given by Laxmi to PW-4 and PW-5 (Exh.13 and Exh.18). In the post-mortem notes, he noted the following injuries on the dead body of Laxmi:-

- i. 13 cm curved transfer sutured wound below thyroid cartilage.
- ii. Small linear transferred sutured wound size 6 cm just below first sutured wound.
- iii. Deep cut throat wound observed with tracheotomy incision anteriorly.
- iv. Trachea was open at the level of 2nd and 3rd cartilage.
- v. Thyroid lobes seen adjacent to trachea.
- vi. Isthmus was seen cut open.
- vii. Esophagus was intact behind trachea.

6.1. He has opined that the cause of her death was due to injury over the neck by a sharp weapon. On being shown the knife (Art.6), he has stated that it is capable of causing the injuries seen on Laxmi. He has proved the PM Notes (Exh.36) and endorsements on the dying declarations (Exh.13 and 16).

7. In the dying declaration (Exh.13) recorded by PW-4, it is seen that the same is written by Laxmi in the presence of PW-13 MR. Gautam D. Gaikwad, Investigating Officer. She has specifically narrated the entire incident and that it was the Appellant who assaulted her.

8. PW-10 - Dr. Sunil R. Jagtap, is a Medical practitioner who is attached to Shree Siddhi Hospital, Nashik, injured Laxmi used to be a trainee nurse from September 2012 to November 2012 and again from December 2012 to March 2013. He has deposed that he had seen Appellant on two occasions when he came to meet Laxmi.

9. We have heard Mrs. Aisha Ansari, learned Advocate for the Appellant and Mr. H.J. Dedhia, learned APP for the Respondent – State and with their able assistance perused the entire record in the present case.

10. Present case is based on the two written dying declarations given by injured Laxmi which are further corroborated by Medical Evidence. Facts of the case are taken from the dying declaration (Exh.13) as there was no one apart from Appellant and Laxmi at the time of the incident.

11. Before we advert to our findings it would be apposite to revisit and reiterate the well settled law while assessing the validity and credibility of dying declaration given by the victim.

11.1. In the case of Shudhakar Vs. State of M.P. AIR 2012 SC 3265 the Supreme Court in para 20 and 21 has explained the doctrine of dying declaration, its efficacy and relevancy as under:

"20. The 'dying declaration' is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only

the truth. Normally in such situations the courts attach the intrinsic value of truthfulness to such statement. Once such statement has been made voluntarily, it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction. More so, where the version given by the deceased as dying declaration is supported and corroborated by other prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration.

21. Having referred to the law relating to dying declaration, now we may examine the issue that in cases involving multiple dying declarations made by the deceased, which of the various dying declarations should be believed by the Court and what are the principles governing such determination. This becomes important where the multiple dying declarations made by the deceased are either contradictory or are at variance with each other to a large extent. The test of common prudence would be to first examine which of the dying declarations is corroborated by other prosecution evidence. Further, the attendant circumstances, the condition of the deceased at the relevant time, the medical evidence, the voluntariness and genuineness of the statement made by the deceased, physical and mental fitness of the deceased and possibility of the deceased being tutored are some of the factors which would guide the exercise of judicial discretion by the Court in such matters. In the case of *Lakhan* (supra), this Court provided clarity, not only to the law of dying declaration, but also to the question as to which of the dying declarations has to be preferably relied upon by the Court in deciding the question of guilt of the accused under the offence with which he is charged. The facts of that case were quite similar, if not identical to the facts of the present case. In that case also, the deceased was burnt by pouring kerosene oil and was brought to the hospital by the accused therein and his family members. The deceased had made two different dying declarations, which were mutually at variance. The Court held as under:

9. The doctrine of dying declaration is enshrined in the legal maxim *nemo moriturus praesumitur mentire*, which means "a man will not meet his Maker with a lie in his mouth". The doctrine of dying declaration is enshrined in Section 32 of the Evidence Act, 1872 (hereinafter called as "the Evidence Act") as an exception to the general rule contained in Section 60 of the Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such statements themselves are relevant facts in certain cases."

11.2. The Supreme Court in the case of *Uttam Vs. State of Maharashtra* MANU/SC/0787/2022, while testing the veracity of dying declaration of a person who facing a serious apprehension of his death and expects no chances of his survival has held that it is highly improbable that at this stage of his life he will make a

false statement or declaration, and is likely to speak only the truth. Paragraph No.11 of the decision is relevant and reads thus:-

"11. Dying declaration is the last statement that is made by a person as to the cause of his imminent death or the circumstances that had resulted in that situation, at a stage when the declarant is conscious of the fact that there are virtually nil chances of his survival. On an assumption that at such a critical stage, a person would be expected to speak the truth, courts have attached great value to the veracity of such a statement. Section 32 of the Indian Evidence Act, 1872 states that when a statement is made by a person as to the cause of death, or as to any of the circumstances which resulted in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing made by the deceased victim to the witness, is a relevant fact and is admissible in evidence. It is noteworthy that the said provision is an exception to the general Rule contained in Section 60 of the Evidence Act that 'hearsay evidence is inadmissible' and only when such an evidence is direct and is validated through cross-examination, is it considered to be trustworthy."

12. On minute perusal of the evidence on record it is seen that there are more than 5 prosecution witnesses who have deposed that they have seen Laxmi in a conscious state of mind and writing down in her own handwriting. The two dying declarations namely Exh.'13' and Exh.'16' are reliable piece of evidence under Section 32 of the Indian Evidence Act, 1872 which have been proved by the prosecution witnesses. Laxmi has clearly named the Appellant as the assaulter. She has also pointed towards the spot of incident. Both statements are duly endorsed by the on-duty Medical doctor. He has also performed the autopsy and the medical evidence corroborates and supports the statements made in the two dying declarations. Both statements establish the presence of Appellant at the scene of crime. CA reports of the seized clothes of Appellant show presence of human blood stains. Appellant in his defence has not been able to prove to the contrary. The weapon i.e. knife used by the Appellant has been seized. Exh.'13', the statement given by Laxmi in her own handwriting also establishes the motive of Appellant in assault her. It is seen that Laxmi was in a fit and oriented stated when she gave her statements. Both statements have been written by her in her own handwriting. As held by the Supreme Court in the case of Shudhakar (first supra), the intrinsic value of a dying declaration written by a victim in the presence of witnesses, especially when the victim is under a serious apprehension of death and expects no chances of survival due to the nature of grievous injuries inflicted is to be considered on a higher pedestal. This is so because, in such a stage, it is very unlikely for a person to lie or falsely implicate a person by giving false declaration. Hence, both statements proved by the prosecution cannot be disbelieved and are highly reliable. We have scrutinised the two statements (dying declarations) carefully and are satisfied that they are true and voluntary. Prosecution has thus proved its case beyond all reasonable doubts leading to the only conclusion that Appellant is the author of the crime

and no one else. We find no infirmity whatsoever in the Judgment and Order dated 05.02.2015 passed by the learned Trial Court and the same has been passed on due consideration of the evidence on record which has been discussed and alluded to hereinabove and therefore deserves to be sustained.

13. In view of the above discussion and findings, the Criminal Appeal is dismissed. Interim Application is accordingly disposed of.