

(2015) 02 BOM CK 0269

In the Bombay High Court

Case No : Criminal Revision Application No. 358 of 2002

Yoseph

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 34, 498-A

Citation : (2015) ALLMR(Cri) 2558

Hon'ble Judges : V.M. Deshpande, J

Bench : Single Bench

Advocate : T.M. Tandale, Advocate h/f A.B. Kale, for the Appellant; S.A. Ambad, APP, R.A. Jaiswal, Advocate, N.S. Ghanekar, Mujtaba Gulam Mustafa, Advs. h/f Zia Ul Mustafa, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.M. Deshpande, J—By the present Revision, the applicant, who is the father of deceased Sushila alias Tereja is questioning the correctness of the judgment and order of acquittal passed by the learned 1st Ad hoc Additional Sessions Judge, Aurangabad, dated 21.10.2002 in Sessions Case No. 247 of 2002, whereby the learned Judge of the court below acquitted the respondents for the offence punishable under Sections 302, 498-A r/w. 34 of the Indian Penal Code. I have heard Shri Tandale, advocate holding for Shri A.B. Kale, learned counsel in extenso for the applicant/complainant and also Shri Mujtaba Gulam Mustafa and R.A. Jaiswal, learned counsel for original accused and Shri S.A. Ambad, learned Additional Public Prosecutor for the State.

2. Sushila was admitted in the hospital by name Sakhar Kamgar Hospital, Shrirampur. Dr. Sharad Satpute (PW 5) was a medical officer of the said hospital. He admitted Sushila in the hospital. On admission, the intimation was given to the police. Shripat Laxman Pawar (PW 6) was the Naib Tahsildar at Shrirampur at the relevant time. On 2.5.2002 he received communication from the police station Shrirampur in respect of recording of the statement of Sushila.

Accordingly, he proceeded to the said hospital. There he met to Dr. Satpute. Dr. Satpute on her examination found that the patient was fit to give her statement. Accordingly, he scribed her statement. The said statement is at Exh. 41.

3. On 2.6.2002 another dying declaration of Sushila was recorded by again Shripat Pawar (PW 6). The said dying declaration is at Exh. 38. The said dying declaration was treated as first information report. On the basis of the same the offence was registered against the accused persons vide Crime No. 21 of 2002 for the offence punishable under Section 498-A, 307 r/w. 34 of the Indian Penal Code. After the death of Sushila, Section 302 of the Indian Penal Code was added.

4. In order to bring home the guilt of the accused persons, the prosecution examined eight witnesses. The learned trial court, after appreciation of the prosecution case was pleased to acquit the accused persons.

5. The learned counsel for the applicant strenuously urged before me that the approach on the part of the learned trial court to acquit the respondents/accused is erroneous, in as much as in view of dying declaration of Sushila (Exh. 38) there was no escape but to convict the present respondents/accused. Besides this, no other point was argued before this court.

6. In the present case, there is no eye witness account. The entire case of the prosecution is based on the dying declarations and the oral dying declaration alleged to have been made with PW 1 Yoseph the present applicant.

The first dying declaration is at Exh. 41. From the evidence of PW 6 Shripat Pawar, it is clear that on getting requisition (Exh. 40) in pursuance of the communication (Exh. 39), he proceeded to the hospital. There he met to Dr. Satpute and after the certification from Dr. Satpute (PW 5) he recorded the dying declaration. Exh. 41 would reveal that Sushila suffered burn injuries due to accident.

Sushila was admitted in the hospital on 1.5.2002; whereas she died on 13.6.2002. Hence, for 45 days this lady was under treatment in the hospital.

7. The record shows that another dying declaration (Exh. 38) was recorded on 2.6.2002. This dying declaration was also recorded by PW 6 Shripat Pawar. This dying declaration clearly attributes role of pouring kerosene by husband Kailas and setting her ablaze by her brother-in-law respondent No. 3-John Bansode. The record reveals that after the first dying declaration was recorded on 1.5.2002, PW 1 Yoseph filed a complaint with the Sub-Divisional Police Officer, Vaijapur on 17.5.2002, which is at Exh. 21. It was alleged therein on 17.5.2002 that Sushila was subjected to cruelty at the hands of accused persons, and therefore, her another statement should be recorded. He again reiterated his request on 2.6.2002 by moving an application with Police Inspector, Shrirampur (Exh. 22). It appears that in pursuance to the request made by Yoseph, the second dying declaration (Exh. 38) was recorded by the scribe Shripat Pawar

(PW 6).

Thus, on record there are two dying declarations Exh. 41 and Exh. 38. Those are contrary to each other on material aspects. The first dying declaration clearly absolves each and every accused person; whereas in second dying declaration role is attributed to the husband and respondent No. 3 John Bansode.

8. Examination of the dying declaration (Exh. 38) would reveal that the said dying declaration was not read over to the declarant Sushila by scribe PW 6 Shripat Pawar. If the contents of the dying declaration were not read over and the contents were not admitted, it will be doubtful as to whether the statements of fact contained in Exh. 38 were made by declarant Sushila or not.

9. Further Dr. Satpute (PW 5) has specifically stated in his evidence that at the time of her admission on 1.5.2002 the patient was fully conscious and at that time he made inquiry with Sushila as to how she has sustained burn injuries and she told him that while cooking due to accident she has received the burn injuries.

10. In so far as oral dying declaration is concerned, Yoseph claims that the said oral dying declaration was made to him on 2.6.2002. If his evidence is to be believed, he visited hospital on 3.5.2002, however, according to him, for 15 days Sushila was not in a position to give her statement as she was not in a position to speak to give her statement. This particular statement cannot be accepted for the reason, Dr. Satpute (PW 5) on perusal of the case papers has specifically stated that right from 1.5.2002 to 12.6.2002 the patient had never become unconscious and she was in a position to speak. If really there was any ill-treatment at the hands of the respondent and kerosene was poured on her person by Kailas, that fact would have been revealed at the first instance to Yoseph when he visited the hospital.

11. All the facts clearly show that the prosecution was unable to bring home guilt of the respondent beyond reasonable doubt. I have perused the impugned judgment. The impugned judgment is not perverse. The view taken by the learned trial court is possible on the basis of the available material on record. In that view of the matter, there is no merit in the Revision. Revision Application is dismissed. Rule is discharged.