

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.93/2013

Kalyan alias Kailas s/o Rajaram Limkar,
age 37 yrs., occu.nil, r/o at post
Shrigonda Sugar Factory,
Tq.Shrigonda Dist.Ahmednagar.
...Appellant..

Versus

The State of Maharashtra,
through the Police Inspector,
Shrigonda Police Station,
Tq.Shrigonda Dist.Ahmednagar.
...Respondents...

.....
Smt.A.S. Mantri, Advocate for appellant.
Smt.V.A. Shinde, APP for respondent.
.....

**CORAM: P.V. HARDAS &
N.W. SAMBRE, JJ.**

DATE: 17.06.2015

ORAL JUDGMENT (Per P.V. Hardas, J.) :

1] The appellant, who stands convicted for offence punishable u/s 302 of the Indian Penal Code and sentenced to imprisonment for life and to pay fine of Rs.5,000/-, in default of which to undergo simple imprisonment for six months and u/s 498-A of the Indian Penal Code with sentence of rigorous imprisonment for three years and to pay fine of Rs.1,000/-, in default of which to undergo

- 2 -

simple imprisonment for one and half months, with a direction that the substantive sentences shall run concurrently, by the Additional Sessions Judge - 3, Ahmednagar, by judgment dated 16.10.2008 in Sessions Case No.129/2007, by this appeal challenges his conviction and sentence.

2] Facts as are necessary for the decision of this appeal may briefly be stated thus :

PW6 PSI Babulal More, who was attached to Shrigonda Police Station and was on patrolling duty on 23.2.2007, was informed by the Police Station Officer of Shrigonda Police Station about admission of injured Sunita in the hospital due to burns. PW6 PSI More was requested to record the statement of the injured and, therefore, he had contacted the Naib Tahsildar. PW6 P

SI More and PW7 Walmik Kakadne, an Executive Magistrate, together reached the hospital and contacted the Medical Officer. The Medical Officer examined injured Sunita and opined that she was in a fit condition to give her statement. Accordingly, PW6 PSI More recorded the statement of injured Sunita at Exhibit 31. On the basis of the said statement at Exhibit 31, an offence vide

- 3 -

Crime No.42/2007 u/s 498-A and 307 of the Indian Penal Code was registered.

Subsequently, PW7 Walmik Kakadne, an Executive Magistrate, recorded the dying declaration of Sunita at Exhibit 38.

Upon registration of the offence, the investigation of the said crime was entrusted to PW6 PSI More. He accordingly visited the scene of the incident and drew the scene of the incident - panchanama and from the scene of the incident, seized one kerosene can, match-stick and ash of burnt saree and quilt as well as the half burnt clothes. The said panchanama is at Exhibit 14. The appellant - accused was arrested. Meanwhile, injured Sunita succumbed to her injuries on 26.7.2007. Section 302 of the Indian Penal Code was accordingly added. Supplementary statements of the witnesses were recorded and on 20.3.2007, the seized property was referred to the Chemical Analyser under requisition at Exhibit 33. Further to the completion of investigation, a charge-sheet against the appellant was submitted.

Post-mortem on the dead body of deceased Sunita was performed by PW4 Dr.Gosavi. PW4 Dr.Gosavi noticed that

- 4 -

injured Sunita had sustained about 92% burns. According to him, deceased Sunita had died due to septicemia due to the burns. The *post-mortem* report is at Exhibit 21.

On the case being committed to the Court of Sessions, trial Court vide Exhibit 4 framed charge against the appellant for offence punishable u/s 498-A and 302 of the Indian Penal Code. The appellant denied his guilt and came to be tried. Prosecution in support of its case examined eight witnesses. The defence of the appellant was of denial. The entire prosecution case revolves around the two oral dying declarations made by Sunita to her parents i.e. PW2 Ghanshyam and PW3 Ranjana as well as the two dying declarations recorded at Exhibits 31 and 38 by PW6 PSI More and PW7 Walmik respectively. The trial Judge accepted the evidence of the prosecution and convicted and sentenced the appellant as afore-stated.

3] We have heard Smt.A.S. Mantri, learned counsel appointed for the appellant and Smt.V.A. Shinde, the learned APP, and in order to effectively deal with the submissions advanced before us by the learned counsel for the parties, it will be useful to refer to the evidence

- 5 -

of the prosecution witnesses.

4] PW2 Ghanshyam, father of deceased Sunita, deposes that deceased Sunita was married to the appellant and the appellant had treated Sunita well for a period of 3 to 4 years. Thereafter, the appellant began to doubt the character of Sunita and was assaulting Sunita. According to Ghanshyam, deceased Sunita had narrated to him the acts of cruelty. Ghanshyam had attempted to convince the appellant on numerous occasions, but the appellant did not pay any heed to the suggestions of Ghanshyam. In respect of the incident, he deposes that he had received intimation that his daughter Sunita had sustained burns and had been taken by the neighbours to the hospital. Ghanshyam and his wife PW3 Ranjana had accordingly gone to the hospital and had noticed that Sunita had sustained burns. Since Sunita was in a position to speak, Sunita narrated to Ghanshyam that the appellant, who had doubted her character, had poured kerosene at her and had set her ablaze. The Medical Officer had given treatment to Sunita and statement of Sunita was recorded in the hospital.

In cross-examination, an admission is elicited that

- 6 -

the statement of Sunita was recorded in the hospital at about 11-00 to 11-15 p.m. He has denied the suggestion that he and his wife were present during the recording of the statement. He has admitted that statement of Sunita was recorded in the hospital at Shrigonda and thereafter her statement was also recorded in the Civil Hospital, Ahmednagar. He has also denied the suggestion that Sunita has sustained the burns due to the flaring of the stove while she was cooking. He has admitted that he had not lodged any report against the appellant though the appellant was ill-treating Sunita as he was suspecting her character.

5] Prosecution has examined PW3 Ranjana, mother of deceased Sunita, who also deposes that the appellant used to doubt the character of Sunita and on that count, used to ill-treat Sunita. She also deposes that she had received an intimation that Sunita had sustained burns. She also deposes that Sunita had disclosed to her that the appellant had set her ablaze as he was suspecting her character. In cross-examination, she has admitted that the two statements of Sunita were recorded in the hospital at Shrigonda. She has admitted that she was

- 7 -

present near Sunita when her statement was recorded.

6] Prosecution has examined PW5 Dr.Urmila Ahire, who had endorsed that two dying declarations, regarding fitness of Sunita to give her statement, were recorded. PW5 Dr.Ahire has further deposed that she had recorded the history of the disclosure made by Sunita to her in the medical case papers at Exhibit 25. She further deposes about the arrival of Naib Tahsildar and the PSI More and examining Sunita and opining that Sunita was in a fit condition to give her statement.

7] Prosecution has examined PW6 PSI More, who had recorded the dying declaration of Sunita at Exhibit 31. According to him, the Medical Officer had opined that Sunita was in a fit condition to give her statement and he had accordingly recorded the statement. The endorsement of the Medical Officer was made at 5-00 a.m. PW6 PSI More has further admitted in the cross-examination that he required about 15 to 20 minutes for recording the statement of Sunita. As per the notings on the dying declaration at Exhibit 31, an offence was registered against the appellant at 5-35 a.m. Since the

- 8 -

endorsement was made by the Medical Officer at 5-00 a.m. And as PW6 PSI More deposes that it required about 15 to 20 minutes for recording the statement, it can be presumed that the statement was concluded at about 5-20 a.m.

8] PW7 Walmik Kakadne, an Executive Magistrate, deposes that he commenced recording the statement of Sunita at 4-35 a.m. and it required about 20 minutes for recording the statement. According to him, the recording of the statement concluded at 5-10 a.m. The endorsement of the Medical Officer at Exhibit 38 discloses that the endorsement was made at 4-35 a.m.

9] According to PW6 PSI More, he commenced to record the statement of Sunita at Exhibit 31 at 5-00 a.m. and concluded the same at about 5-20 a.m. The evidence of PW7 Walmik Kakadne indicates that he commenced the recording of the statement of Sunita after the Medical Officer had given the endorsement at 4-30 a.m. And concluded the recording at 5-10 a.m. We thus have before us a case where the two scribes i.e. PW6 PSI More and PW7 Walmik Kakadne claim that the statements of injured

- 9 -

Sunita were virtually recorded simultaneously. The aforesaid aspect is difficult to believe and it is impossible for the two statements to have been recorded simultaneously. The cloud of suspicion, therefore, hovers over the recording of the two dying declarations at Exhibits 31 and 38. Further more, we find that PW6 PSI More has admitted that the statement had been recorded by his writer Constable. The scribe of Exhibit 31 has not been examined. For the aforesaid reasons, therefore, in our opinion, implicit reliance cannot be placed on the dying declarations at Exhibits 31 and 38.

10] The other dying declaration is the disclosure made by injured Sunita to PW5 Dr.Ahire, which is recorded at Exhibit 25. In Exhibit 25, the time of setting Sunita ablaze is stated to be 2-00 a.m. while in Exhibits 31 and 38, Sunita claims that she was set ablaze at 10-00 p.m. In the light of the said discrepancy, in our opinion, implicit reliance on the dying declaration at Exhibit 25 cannot be placed.

11] We are not impressed with the oral dying declaration alleged to have been given to PW2 Ghanshyam

- 10 -

and PW3 Ranjana by the injured Sunita. PW2 Ghanshyam and PW3 Ranjana had arrived at the house of the accused and thereafter taken Sunita to the hospital. Curiously enough, neither Ghanshyam nor Ranjana had lodged any report and thus there is no contemporaneous document containing the disclosure alleged to have been made by Sunita to Ghanshyam and Ranjana. Since we have found that the written dying declarations do not inspire confidence and, therefore, cannot be relied upon, in our opinion, the conviction of the appellant cannot be sustained on the basis of the oral dying declarations.

12] In respect of the offence punishable u/s 498-A of the Indian Penal Code, we find that the evidence is extremely omnibus and no instances with details of the assault are stated either by Ghanshyam or Ranjana. Vague and omnibus allegations have been made by these two witnesses and we find that the prosecution has failed to prove the offence punishable u/s 498-A of the Indian Penal Code beyond reasonable doubt.

13] Thus, in our opinion, the appellant is entitled to be given the benefit of doubt.

- 11 -

14] Accordingly, this criminal appeal is allowed. 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 charged and convicted. Fine, if paid by the appellant, be refunded to him. Since the appellant is in jail, he be released forthwith if not required in any other case.

Fees payable to the learned counsel appointed for the appellant is quantified at Rs.5,000/- (rupees five thousand only).

(N.W. SAMBRE, J.)

(P.V. HARDAS, J.)