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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 487 OF 2013

Abhiman Narayan Mane
Age 40 years, R/o Mane Wasti,
Shejbabhulgaon, Tal. Mohol,
District – Solapur

.. Appellant
(Org. Accd. No. 1)

Vs.

The State of Maharashtra

.. Respondent

Mr. S. V. Kotwal i/by Mr. Ashok B. Tajane for appellant.
Mrs. Sangeeta D. Shinde, APP for State.

CORAM: P. V. HARDAS &
DR. SHALINI PHANSALKAR-JOSHI,JJ.

MARCH 17, 2015.

ORAL JUDGMENT [Per P. V. Hardas, J.] :

1. The appellant, who stands convicted for offence punishable under Section 302 of the Indian Penal Code and sentenced to imprisonment for life and to pay a fine of Rs.5000/-, in default of which to undergo further RI for six months, by the 1st Ad-hoc Additional Sessions Judge, Solapur, by judgment dated 07/03/2013, in Sessions Case No. 86 of 2009, by this appeal challenges his conviction and sentence.

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

PW 7 – ASI Netaji Pawar, who was attached to the Mohol Police Station and was on duty on 21/7/2008, received a telephone call from the Civil Hospital, informing him about hospitalization of injured Vrindavani, wife of appellant, due to burns. PW 7 – ASI Pawar was directed by the PI to record the dying declaration of Vrindavani. PW 7 – ASI Pawar, accordingly, proceeded to the Civil Hospital at Solapur and thereafter went to the burn ward. A Nurse had pointed out the bed of Vrindavani to him. PW 7 – ASI Pawar called the Medical Officer and the Medical Officer PW 8 – Dr. Sathe examined Vrindavani and opined that she was in a fit condition to give her statement. An endorsement to that effect was put by the Medical Officer on the paper, on which the statement was to be scribed. PW 7 – ASI Pawar accordingly recorded the statement of injured Vrindavani who stated that the appellant had poured kerosene on her and had set her ablaze and thereafter had fled from the house and had latched the door from outside. Vrindavani also disclosed to PW 7 – ASI Pawar that she had cried out for help and her daughter opened the door and

extinguished the fire by pouring water on her from the tank which was outside the house. The statement/dying declaration of Vrindavani is at Exh. 53.

PW 9 – PSI Madan Sisal, who was attached to the Mohol Police Station, was handed over the statement of injured and on the basis of the statement of the injured, an offence vide Crime No. 317 of 2008 was registered and was handed over to him for investigation. He was also handed over Exh. 48, a dying declaration recorded by the Executive Magistrate. On being entrusted with the investigation, he proceeded to the scene of the incident and in the presence of the panch witnesses drew the scene of the incident panchanama at Exh. 33. From the scene of the incident, he seized one plastic can containing kerosene, one match-box and four pieces of half burnt saree. He also seized burnt pieces of blouse and petticoat. He recorded the statements of witnesses. Since injured Vrindavani had succumbed to her injuries, an inquest panchanama was drawn and the dead body was referred for postmortem examination. On 25/7/2008 statements of witnesses were recorded and on 26/7/2008, the appellant/original accused no.1 was arrested under an arrest panchanama at Exh. 49. Statement of Sonali was recorded on 28/7/2008. The other

accused were arrested under an arrest panchanama at Exh. 35. Accused No.5 – Vimal was arrested under an arrest panchanama at Exh. 36. Further to the completion of investigation, a charge-sheet against the appellant and the other accused was submitted.

Postmortem on the dead body of deceased Vrindavani was performed by PW 5 – Dr. Suryakant Kamble. PW 5 – Dr. Kamble found that Vrindavani had sustained 87% superficial to deep burns. He, therefore, opined that deceased Vrindavani had died due to 87% superficial to deep burns with shock. The postmortem report is at Exh. 45.

It appears that PW 6 – Nagnath Malvadkar, an Executive Magistrate, had received a letter on 21/7/2008 from the Sadar Bazar Police Station, requesting him to record the dying declaration of injured Vrindavani. The said communication is at Exh. 47. On receipt of the said letter, he proceeded to the Civil Hospital at Solapur and contacted PW 8 – Dr. Sathe and requested him to opine if Vrindavani was in a fit condition to give her statement. The Medical Officer examined Vrindavani and opined that she was in a fit condition to give her statement. Accordingly, statement of Vrindavani was recorded by PW 6 – Malvadkar at Exh. 48. In

the said statement, Vrindavani had stated that the appellant had poured kerosene on her. She had also stated that the appellant used to threaten to kill Vrindavani on earlier occasions.

3. On the case being committed to the Court of Sessions, trial court vide Exh. 20 framed charge against the appellant and other accused for offence punishable under Section 302 read with 34 of the IPC. The accused denied their guilt and claimed to be tried. Prosecution, in support of its case, examined nine witnesses. The defence of the accused was of denial. The trial court, upon appreciation of the evidence, convicted and sentenced the appellant as afore-stated, while acquitting the other accused.

4. We have heard Mr. Kotwal, learned counsel for the appellant and the learned APP and in order to effectively deal with the submissions advanced before us by the learned counsel for the parties, it would be useful to refer to the evidence of the prosecution witnesses.

The appellant had filed Criminal Application No. 660 of 2013, praying for suspension of sentence and his release on bail. The aforesaid application, by order of this court dated 2/9/2013, was dismissed,

expediting the hearing of the appeal. Subsequently, the appellant had filed Criminal Application No. 7 of 2015, praying for expediting the hearing of the appeal. This court, taking into consideration the fact that the appellant was in jail since 2008 and looking to the evidence adduced by the prosecution, fixed date of hearing was granted. The appeal was accordingly fixed on 17/3/2015 and, therefore, has been called out for hearing today.

5. The first dying declaration was recorded by PW 6 – Malvadkar, an Executive Magistrate. PW 6 – Malvadkar deposes that the dying declaration, after it was recorded, was read over to the declarant who had admitted the contents to have been correctly recorded. Subsequently, a thumb impression of injured was obtained on the dying declaration. PW 6 – Malvadkar, in cross-examination, has admitted that a printed proforma had been used for recording the dying declaration. He has admitted as correct that he had not put the date beneath his signature on the dying declaration. He has also admitted that the Medical Officer had not mentioned the time in the endorsement which was put by the Medical Officer. He has also admitted that he had not specifically mentioned in the dying declaration that he had found the injured to be conscious and in a fit

condition to give her statement. He has admitted that the thumb impression of Vrindavani is not attested in the dying declaration.

Mr. Kotwal, learned counsel for the appellant has urged before us that admittedly Vrindavani had sustained 87% burns and yet her thumb impression was obtained. It is also urged before us that the dying declaration does not state the time of commencement of its recording and the conclusion of the recording of the dying declaration. It is also urged before us that the thumb impression of Vrindavani is not attested. The learned APP has supported the findings arrived at by the trial court.

In the dying declaration at Exh. 48 Vrindavani has stated that her husband had called her inside the house and thereafter had poured kerosene on her. She has also given the time of the incident as 1.20 a.m. She has also admitted that the fire was extinguished by her son and her daughter. The dying declaration also contains a recital that her husband used to threaten to kill Vrindavani since last 2 to 3 months and had also once assaulted her. In the dying declaration there is no reference that it was the appellant who had set her ablaze. It is true that the dying declaration does not contain the timing of its commencement and conclusion. Even the

Medical Officer has not put the time of examination of Vrindavani. The thumb impression also does not appear to be attested. In our opinion, the aforesaid infirmities are not of such a magnitude as would entail the rejection of this dying declaration. The Medical Officer has deposed about examining Vrindavani and finding her in a fit condition. Vrindavani has been identified by the Medical Officer and, therefore, failure to obtain the attestation would not be a factor which would vitiate the dying declaration. Though Vrindavani had sustained 87% burns, there is no evidence to indicate that the thumbs of Vrindavani were burnt to an extent that it was impossible to obtain the thumb impression. In our opinion, therefore, the infirmities which have been pointed out in the dying declaration are not sufficient for discarding the dying declaration.

6. The second dying declaration was recorded by PW 7 – ASI Pawar, who deposes about recording of the dying declaration and then reading over the declaration to the declarant and the declarant admitting the contents to have been correctly recorded. In cross-examination, he has admitted that the timing of the recording of the dying declaration was not stated in the dying declaration. There is no endorsement in the dying declaration at Exh. 53 that the same had been read over to the declarant and

the declarant had admitted the contents to have been correctly recorded.

7. Prosecution has examined PW 3 – Sonali, an eye witness to the incident. PW 3 – Sonali deposes that the appellant is her father and she was residing with the appellant and deceased Vrindavani and her brother Mukesh at Bhambewadi. According to her, the appellant used to quarrel with deceased Vrindavani as the deceased used to tell the appellant not to chit-chat with accused no.5 – Vimal and not to behave indecently with Vimal. According to Sonali her uncle had also told the appellant in that regard. According to her, accused no. 5 – Vimal used to frequently come to their house and used to tell the appellant that they would not be happy till Vrindavani was alive. The appellant used to assault Vrindavani after the accused – Vimal had left the house. In respect of the incident, Sonali deposes that on 20/7/2008 her school was closed as it was a Sunday. In the morning, at about 10 to 10.30 a.m. the appellant had gone to the adjoining village. At about 6 to 6.30 p.m. the appellant returned home. Vrindavani was indisposed as she was suffering from headache and requested the appellant to take her to the hospital. The appellant, instead of taking her to the hospital, quarreled with her. In the evening, after taking their dinner, all of them retired to sleep. In the mid-night, Sonali heard the

cries of her mother and was, therefore, awakened from sleep. She noticed that her parents were not found sleeping on the bed. She noticed the appellant going out of the house and latching the door from outside. Sonali opened the latch of the door and noticed that Vrindavani had sustained burns. Sonali, therefore, poured water on her and extinguished the fire. Sonali enquired from Vrindavani as to how she had sustained burns and Vrindavani disclosed to her that the appellant had taken her in the adjoining room and had poured kerosene on her and had set her ablaze and had fled from the house. Sonali thereafter went to the house of her uncle and narrated the incident. She also telephoned her other maternal uncle. Sonali was accompanied by Vrindavani and her brother Mukesh. After about 30 to 35 minutes, PW 2 – Changdeo arrived there, who also enquired from Vrindavani about the incident and Vrindavani disclosed the incident to him. Vrindavani was thereafter taken to the hospital. On 23/7/2008 Vrindavani succumbed to her injuries.

8. In cross-examination, she has admitted that she was disliking the relations between the appellant and accused no.5 and was also disliking the appellant whenever the appellant used to assault Vrindavani. She has also denied the suggestion that on account of the tutoring by her uncle, she

was deposing falsely.

Mr. Kotwal, learned counsel for the appellant has urged before us that Sonali has not given details as to how she had managed to open the latch and, therefore, it is extremely doubtful if Sonali was present in the house. The learned APP has urged before us that presence of Sonali in the house was most natural and there is nothing in the cross-examination to discredit the testimony of Sonali.

The spot panchanama indicates that the door was of two planks. The appellant, according to the prosecution, had placed a latch from outside. Vrindavani in her dying declaration and Sonali in her deposition have clearly stated that Sonali had opened the latch from inside. We do not find that opening of the latch from inside is an impossibility to doubt the veracity of PW 3 – Sonali. Sonali has clearly deposed about appellant fleeing from the house and about Vrindavani disclosing the incident to Sonali. At the close of cross-examination, Sonali has emerged as a reliable witness on whom reliance can be placed. The evidence of Sonali stands amply corroborated by the recitals of the dying declaration. We, therefore, find that implicit reliance can be placed on the evidence of

PW 3 – Sonali.

9. Prosecution has examined PW 2 – Changdeo, brother of deceased, who deposes about the relations between the deceased and the appellant. He has also deposed about the oral dying declaration given to him by Vrindavani. There is nothing in the cross-examination, on the basis of which, the credibility of PW 2 – Changdeo can be doubted.

10. Prosecution has also examined PW 4 – Navnath Mane, uncle of deceased, who also claims that deceased had made a oral dying declaration to him. However, the presence of Navnath is not referred to either by PW 3 – Sonali or PW 2 – Changdeo.

11. Thus, in our opinion, even if the evidence of PW 4 – Navnath is left out of consideration as well as the dying declaration at Exh. 53 recorded by PW 7 – ASI Pawar is left out of consideration, there is overwhelming evidence which proves the offence against the appellant beyond reasonable doubt. In our opinion, therefore, the prosecution has proved the offence against the appellant beyond reasonable doubt. The appeal, therefore, which is sans merit, deserves to be dismissed.

11. Accordingly, Criminal Appeal No. 487 of 2013 is dismissed, confirming the conviction and sentence of the appellant.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(P. V. HARDAS,J.)