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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 642 OF 2005

Dadasaheb Vyankatesh Gholve
Age 34 years, R/a Jawale,
Taluka – Barshi, Dist. Solapur.

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

Vs.

The State of Maharashtra

.. Respondent

Mr. Shirish Gupte, Senior Counsel a/w Mr. S. V. Kotwal and Mr. Ashish
Sawant for appellant.
Smt. V. R. Bhosale, APP for State.

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

MARCH 12, 2015.

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

1. The appellant, who stands convicted for offence punishable under Sections 302 and 498-A 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 RI for six months and RI for three years and to pay a fine of Rs.500/-, in default of which to undergo RI for one month, with a direction that the substantive sentences shall run concurrently, by the Additional

Sessions Judge, Solapur, by judgment dated 01/07/2005, in Sessions Case No. 45 of 2004, by this appeal challenges his conviction and sentence.

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

PW 9 – Police Constable Sudhakar Jagtap, who was attached to the Barshi Police Station and was on duty on 10/11/2003, had received MLC regarding the admission of Sangeeta in the Barshi Maternity Hospital with burns. PW 9 – Police Constable Jagtap accordingly issued a letter to the Special Executive Magistrate at Exh. 21 requesting for recording of the dying declaration of Sangeeta. The said letter was issued at 6.30 p.m. PW 9 – Police Constable Jagtap thereafter went to the hospital for recording the statement of Sangeeta, but was informed that Sangeeta was not in a position to give her statement. He had accordingly visited the hospital thrice, but was informed that condition of Sangeeta was not such that she could give her statement. He thereafter visited the hospital at 11.30 p.m. and was informed by the Medical Officer that Sangeeta was in a condition to give her statement. An endorsement of the Medical Officer was obtained about condition of Sangeeta and PW 9 – Police Constable Jagtap recorded

the statement of Sangeeta at Exh. 46. He forwarded the statement of Sangeeta to the Police Station under his report at Exh. 47.

PW 3 – Shamkant Upare, a Special Executive Officer, was informed by the constable from Police Station, Barshi and was handed over a letter at Exh. 21. On receipt of the letter at Exh. 21, he proceeded to the hospital at Barshi and enquired from the Medical Officer regarding the condition of injured Sangeeta to give her statement. The Medical Officer opined that Sangeeta was in a fit state to give her statement. An endorsement was accordingly put by the Medical Officer. PW 3 – Shamkant, SEO, then recorded the statement of Sangeeta. In the statement Sangeeta had stated that the appellant had assaulted her since a day prior to the incident, had assaulted her on the day of the incident and was asking Sangeeta to give her mangalsutra for consuming liquor. The appellant thereafter had poured kerosene on Sangeeta and set her ablaze. The dying declaration commenced at 11 p.m. and concluded at 11.30 p.m. The dying declaration was read over to Sangeeta and Sangeeta had admitted the contents to have been correctly recorded. Thumb impression of Sangeeta was obtained and the original dying declaration was then handed over to the police.

PW 7 – PSI Ghodse, who was attached to Barshi Police Station was entrusted with the investigation of Crime No. 155 of 2003. He accordingly visited the scene of the incident and in the presence of panchas drew the scene of the incident panchanama at Exh. 17. From the scene of the incident, he seized a plastic glass, pieces of burnt saree, broken pieces of bangles and the black beads of mangalsutra. One plastic can, which was found lying there, was also seized. He recorded the statements of witnesses and on 11/11/2003 arrested the three accused. The clothes of the appellant, which were found smelling of kerosene were seized under seizure memo at Exh. 29. On 13/11/2003 Sangeeta succumbed to her injuries and Section 302 of IPC was added. An inquest panchanama of the dead body of Sangeeta was drawn in the presence of panchas at Exh. 15 and the dead body was then forwarded for postmortem examination. On 13/12/2003 the seized articles were referred to the C.A. under requisition at Exh. 34. The report of the C.A. is at Exh. 35. Further to the completion of investigation, a charge-sheet against the accused was filed.

Postmortem on the dead body of deceased Sangeeta was performed by PW 1 – Dr. Bopal, who noticed that deceased Sangeeta, who

was aged about 30 years, had sustained 94% burns. According to him all the injuries were antemortem. He, therefore, opined that deceased Sangeeta had died due to cardio respiratory arrest due to shock due to 94% burns. The postmortem report is at Exh. 10. The advance provisional certificate is at Exh. 11.

3. On committal of the case to Court of Sessions, trial court vide Exh. 6 framed charge against the appellant and other two accused i.e. parents of the appellant for offence punishable under Sections 302 r/w 34, 498-A r/w 34 and alternatively under Section 306 r/w 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 accused nos.2 and 3 for the offences they were charged with. The appellant was also acquitted of the alternative charge under Section 306 r/w 34 of IPC.

4. We have heard Mr. Shirish Gupte, learned Senior Counsel for the appellant and the learned 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.

5. The evidence in respect of the charge under Section 302 of IPC comprises of the two dying declarations i.e. dying declaration at Exh. 22 recorded by PW 3 – Shamkant and the dying declaration at Exh. 46 recorded by PW 9 – Police Constable Jagtap. Evidence of PW 3 – Shamkant reflects that on the Medical Officer opining that the injured was in a fit condition to give her statement, PW 3 – Shamkant recorded the dying declaration at Exh. 22. The said dying declaration was read over to Sangeeta and on Sangeeta admitting the contents to have been correctly recorded, thumb impression of Sangeeta was obtained. Though PW 3 – Shamkant has been cross-examined at length, nothing of importance has been elicited in the cross-examination. PW 3 – Shamkant, in cross-examination, has denied the suggestion that the names of the father-in-law and mother-in-law of Sangeeta had been written in the available space and were in cramped handwriting. He has admitted that he had left the ward at 11.30 p.m. and thereafter had handed over the dying declaration to the police constable, who was waiting outside the ward. He has denied the suggestion that Sangeeta had not given her dying declaration at Exh. 22.

6. Learned Senior Counsel for the appellant has urged before us that no reliance can be placed on the dying declarations, in the light of the fact that Sangeeta had sustained 94% burns and could not have given an elaborately detailed dying declarations. The learned APP has supported the findings arrived at by the trial court.

7. Exh. 39, which is a record maintained in the hospital, indicates that at 10.30 p.m. Sangeeta was not in a fit condition to give her statement. This is deposed too by PW 9 – Police Constable Jagtap, who had gone to the hospital for recording the statement of Sangeeta. The evidence of PW 8 – Dr. Bhaskar Raut indicates that when he had examined Sangeeta at 11 p.m., as he was requested by the Magistrate to ascertain if Sangeeta was in a fit condition to depose, had found that Sangeeta was in a position to give her statement. He had accordingly endorsed on the dying declaration that Sangeeta was in a position to give her statement. He has admitted that he was present during the recording of the dying declaration. He has further deposed that at 11.30 p.m. he had examined Sangeeta and had found that Sangeeta was in a fit condition to give her statement and accordingly PW 9 – Police Constable Jagtap had recorded the statement of Sangeeta at Exh. 46.

Thus, we find that though Sangeeta may not have been in a position to give her statement at 10.30 p.m., the evidence of PW 8 – Dr. Raut indicates that Sangeeta was in a fit condition to give her statement at 11 p.m. and accordingly PW 3 – Shamkant had recorded the statement of Sangeeta at Exh. 22. Though PW 8 – Dr. Raut has been cross-examined at length, the cross-examination has not made any dent in the evidence that Sangeeta was in a position to give her statement at 11 p.m. Sangeeta did not succumb to her injuries immediately, but expired on 13/11/2003 i.e. two days after the incident. We, therefore, find that the dying declaration at Exh. 22 cannot be doubted on the ground that Sangeeta may not have been in a condition to give her statement at 11 p.m. on account of 94% burns. The dying declaration at Exh. 22 is not an elaborately detailed dying declaration, but is a dying declaration recorded in response to the questions which were put to Sangeeta. The dying declaration also, therefore, cannot be faulted on that score. In our opinion, the dying declaration at Exh. 22 inspires the confidence of the court for its implicit acceptance. The dying declaration at Exh. 46 cannot be relied upon as has been rightly urged before us by the learned Senior Counsel for the appellant as there is no endorsement that the dying declaration had been read over to Sangeeta and

that Sangeeta had admitted the contents to have been correctly recorded. PW 9 – Police Constable Jagtap also does not depose that the dying declaration at Exh. 46 was read over to Sangeeta. In the light of the judgment of the Supreme Court in **Shaikh Bakshu & ors. vs. State of Maharashtra [(2007) 11 SCC 269]**, no reliance can be placed on the dying declaration at Exh. 46. However, the dying declaration at Exh. 22 is a reliable and confidence inspiring piece of evidence, which proves the offence against the appellant that he had poured kerosene on Sangeeta and had set her ablaze. There is an additional circumstance that the clothes of the appellant, which were referred to the C.A., tested positive for the presence of kerosene.

8. Prosecution has examined PW 4 – Dayanand, brother of deceased Sangeeta, who had lodged his report at Exh. 25. PW 4 – Dayanand has deposed in detail about the ill-treatment given by the appellant to deceased Sangeeta. Certain omissions have been elicited in his cross-examination in respect of the ill-treatment given by accused nos.2 and 3. Accordingly, accused nos.2 and 3 have been acquitted by giving the benefit of doubt. However, in respect of the appellant, the evidence of PW 4 – Dayanand establishes that the appellant had ill-treated Sangeeta on

account of the illegal demand made by the appellant. Sangeeta had herself narrated the ill-treatment to PW 4 – Dayanand and, therefore, we do not find any ground whatsoever for discarding the evidence of PW 4 – Dayanand. The appellant, therefore, in our opinion, has been rightly convicted for the offence punishable under Section 498-A of IPC.

9. Thus, upon examining the prosecution evidence, we find that the prosecution has proved the offence against the appellant beyond reasonable doubt. The appeal filed by the appellant is without merit and deserves to be dismissed.

10. Accordingly, Criminal Appeal No. 642 of 2005 is dismissed, confirming the conviction and sentence of the appellant.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(P. V. HARDAS,J.)