

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.376 OF 2010

Sanjay Bapurao Sasne	... Appellant
versus	
The State of Maharashtra	... Respondent

.....

- Mr. Priyal Gopaldas Sarda, for the Appellant.
- Ms. R.M. Gadhvi, APP for the State/Respondent.

CORAM	: A.A. SAYED & SARANG V. KOTWAL, JJ.
RESERVED ON	: 31st AUGUST, 2017
PRONOUNCED ON	: 12th SEPTEMBER, 2017

JUDGMENT (PER : SARANG V. KOTWAL, J.) :

1. The Appellant has preferred the present Appeal against judgment and order dated 06/04/2010 in Sessions Case No.09/09, passed by Additional Sessions Judge, Ichalkaranji, whereby the Appellant was convicted for commission of offence punishable u/s 302 of the Indian Penal Code and was sentenced to suffer imprisonment for life and to pay a fine of Rs.15,000/- and in default of payment of fine to suffer further rigorous imprisonment for six months.

2. The prosecution case is that, the present Appellant was having illicit relationship with one Savitri Chandrakant Londhe. Savitri's husband had expired a few years ago and her son was residing with his Uncle. Savitri was residing alone. On 20/12/2007 at about 11.00 p.m. the present Appellant quarreled with Savitri. He was demanding that Savitri should transfer her house in his name, and on her denial; getting annoyed, he poured kerosene on her person and set her ablaze. Thereafter he threw water on her person and fled away from the spot. The said Savitri went to her sister-in-law's place. She was taken to hospital by her relatives. According to the prosecution case, her statement was recorded in the night, which was treated as FIR. Initially the FIR was registered at Laxmipuri Police Station vide C.R.No.00/07 and was transferred to Hupari Police Station, Kolhapur, at about 03.05 p.m. on 21/12/2007 and crime was registered vide C.R.No.72/07 u/s 307, 504 of the Indian Penal Code. On the next morning of the incident again her statement was recorded by a Special Executive

Magistrate in respect of the incident. Savitri survived for a few days and ultimately on 26/12/2007 she succumbed to her injuries because of the Septicemic shock. She had suffered 75% superficial to deep burn injuries. After the death of the victim section 302 of IPC was added.

3. The Appellant was arrested on the next day of the incident i.e. on 21/12/2007. Various panchanamas and statements of the witnesses were recorded and after the investigation was over, charge-sheet was filed on 18/03/2008 before the 4th J.M.F.C. Ichalkaranji, Kolhapur. Thereafter the case was committed to the Court of Sessions and was tried as Sessions Case No.09/09 before the Additional Sessions Judge, Ichalkaranji. The charge was framed against the Appellant on 30/09/2009 u/s 302 and 504 of the Indian Penal Code. At the conclusion of the trial the Appellant was acquitted from the charge of commission of offence u/s 504 of IPC and was convicted u/s 302 of IPC as mentioned earlier.

4. During the trial the prosecution examined 11 witnesses. P.W.1 Anil Bapusaheb Ghongade was the Pancha for spot panchanama, which was carried out on 21/12/2007 between 15.30 p.m. to 16.15 p.m. in the house of the said Savitri. During conduct of the spot panchanama the police seized two burnt Sarees, a Can containing kerosene, a burnt blouse, a small kerosene lamp, match box and pair of footwear. However, the articles were not sent to C.A. and there are no C.A. Reports assisting the prosecution against the accused in the present case.

5. P.W.2 Sunil Chandrakant Londhe was the son of the deceased. P.W.3 Maruti Doulat Londhe was the brother-in-law of the deceased. P.W.5 Subhadra Maruti Londhe was the sister-in-law of the deceased. P.W.7 Rajesh Shankar Rathod was P.W.2 Sunil's friend. All these witnesses did not support the prosecution case. They were examined on two aspects i.e. past illicit relationship between the Appellant and the deceased and the oral Dying Declaration she was supposed to have made

while being taken to hospital in their presence. However, none of these witnesses has supported the prosecution case and they were declared hostile.

6. P.W.8 Dr.Vinod Vijay Paradeshi had conducted the Post Mortem examination on the deceased and had found 75% burn injuries on her body. The cause of death was given by him as death due to Septicemic shock after 75% burn injuries, which were superficial to deep. P.W.10 Balwant Krishna Hajare, P.H.C. was attached to Laxmipuri Police Station, Kolhapur and had taken down entry in the station diary in respect of information received by him in respect of aforesaid crime. P.W.11 Rajendra Mahadev Todkar, API was the Investigating Officer.

7. The prosecution case however rests on the evidence of three important witnesses i.e. P.W.4 Sharad Vasantrao Patil who was a Special Executive Magistrate and who had recorded her Dying Declaration between 11.15 a.m. to 11.30 a.m. on 21/12/2007, which was produced in evidence vide Ex.23. P.W.6

Assistant PSI Dundappa Balappa Chigari had recorded the Dying Declaration on 21/12/2007 between 03.15 a.m. to 04.15 a.m. in the hospital in presence of the Medical Officer, which was exhibited vide Ex.27. P.W.9 Dr. Sudhakar Ganapati Dhekale was the Medical Officer, who was present in the C.P.R. Hospital, Kolhapur, where the deceased was admitted in night between 20/12/2007 and 21/12/2007 and who had first treated the deceased. He has produced the medical papers vide Ex.43, wherein he had mentioned the history given by the deceased to him at 01.45 a.m. on 21/12/2007.

8. In all these three Dying Declarations, the deceased has clearly implicated the present Appellant as the person who had thrown kerosene on her and set her ablaze.
9. We have heard Mr.Priyal Sarda, the learned Counsel for the Appellant and Ms.R.M. Gadhvi, the learned APP for the State. With their assistance we have read the evidence and have perused the record and proceedings.

10. Mr.Sarda submitted that none of the three written Dying Declarations was reliable and the minimum necessary precautions which were required to be taken while recording the Dying Declarations were not taken. He submitted that since both the thumbs were burnt, it was not possible that thumb impression could show ridges on the Dying Declarations and therefore it raised suspicion about obtaining the thumb impressions. The Dying Declarations, per se, are contradictory to each other. He further submitted that therefore if those Dying Declarations were left out of the consideration, there is no evidence against the Appellant and therefore the Appellant deserves to be acquitted.

11. He further submitted that none of the neighbours or the persons who had removed the deceased to the hospital was examined. The person to whose house she had first gone, was not examined. Her other relatives have not supported the prosecution case. The articles were not sent for chemical analysis. The deceased or her clothes were not showing presence

of kerosene or at least there is no evidence to that effect adduced by the prosecution. He submitted that the scribes of these Dying Declarations were not examined.

12. As against these submissions, the learned APP has supported the prosecution case on all counts and in particular the learned APP has relied on the three Dying Declarations.

13. Considering the above rival submission it is quite obvious that the case rests on the three Dying Declarations. The first of these Dying Declarations is recorded at 01.45 a.m. in the night, when she was admitted to the hospital. This is in respect of the history given by the deceased herself to the Doctor, which is recorded in the medical papers at Ex.43. The history given by the deceased recorded at 01.45 a.m. on 21/12/2007 reads thus;

“Homicidal burns by (Sanjay Sasne R/o Rendal, Age-35 yrs.) on 20/12/2017 at 10.30 p.m. by kerosene.”

14. In the same document it is clearly mentioned that the patient was conscious, oriented, was in agony and was obeying

commands. The said document further mentions that the burns were superficial to deep upto 73% and both the thumbs were burnt. This recording of history by the doctor satisfies all the requirements of a Dying Declaration mentioned u/s 32 of the Evidence Act. The statement was made by the victim, was clear and was related to the transaction leading to the death of the deceased. The Medical Officer himself recorded that the patient was conscious and oriented and this information was given immediately. There is no reason to disbelieve the said witness P.W.9 Dr.Dhekale in this behalf. The Medical Officer was an independent witness and was treating the deceased and therefore he cannot be attributed any motive to implicate the Appellant falsely.

15. The next Dying Declaration was recorded by P.W.6 Assistant PSI Chigari between 03.15 a.m. to 04.15 a.m. This Dying Declaration was exhibited as Ex.27 in the trial. After Savitri was admitted in the hospital, the Medical Officer informed the police, who came in the hospital and after taking endorsement of the Medical Officer, this Dying Declaration was

recorded and at the end of this Dying Declaration also there was an endorsement by same P.W.9 Dr. Dhekhale. The first endorsement at the top mentions that the patient was in a condition to give statement and the second endorsement at the bottom mentions that the statement was given in front of the said witness P.W.9 Dr. Dhekale. From the evidence of P.W.6 it is clear that he had gone to the Medical Officer to obtain his opinion about the fitness of patient to give statement. In this connection P.W.9 Dr.Dhekale has elaborated in paragraph No.3 by his deposition that the lady was conscious and oriented and has admitted his endorsement on Ex.27. He further clarified that the endorsement was written by his Assistant Doctor, though he does not name him. He further asserted that the statement was recorded as per her own narration and that it was recorded before him. He further submitted that the endorsement at the bottom was in his handwriting. Mr.Sarda submitted that the Honourable Supreme Court in the case of *Laxman Vs. State of Maharashtra, reported in AIR 202 SUPREME COURT 2973*, has held that it is necessary that the person who records the

Dying Declaration should be satisfied that the deceased was in fit state of mind. It was further held that when it is proved that the Magistrate recording the statement was satisfied that the declarant was fit to make the statement, then even without examination of the declarant by the doctor the declaration can be acted upon, provided the Court ultimately holds the same to be voluntary and truthful. It was further held that a certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise. Mr.Sarda submitted that the satisfaction of P.W.6 ASI Assistant PSI Chigari to that effect was not proper as he had relied on the endorsement of the Doctor. In the case of Laxman (Supra) the Honourable Supreme Court has already held that the certification by the Doctor is essentially a rule of caution. In the present case the Medical Officer, who was treating Savitri, has recorded that the patient was well oriented and was in a position to give statement, then there is no reason why such evidence cannot be relied on. Therefore we are satisfied that the prosecution has sufficiently led evidence to

show that at the point of recording of Dying Declaration Ex.27, the deceased was well oriented and was in a position to give statement and therefore this Dying Declaration can safely be relied on.

16. The prosecution has also relied on the Dying Declaration recorded by Executive Magistrate Sharad Patil, who was examined as P.W.4. He has stated that he was requisitioned by the police to record the Dying Declaration. Accordingly he went to the hospital at about 10.15 a.m. on 21/12/2007. He waited till 11.10 a.m. for arrival of the Doctor. But since the Doctor was not available, he satisfied himself that the patient was capable to give the statement and thereafter he recorded the statement. This witness in his deposition has stated that he had ascertained that the patient was in a condition to speak and thereafter he recorded the statement. In the cross examination a specific suggestion was put to him to which he answered thus, "It is not true to say that due to burn injuries, physical health and mental condition of Savitri was not good. Therefore she was

not able to make any statement.” Thus, the defence in the cross-examination has brought out the prosecution case and in particular the case of this witness P.W.4 that the mental condition of the deceased was good at that point. Further more, the initial questions mentioned in Ex.23 of the said Dying Declaration also indicate that the said witness P.W.4 has satisfied himself that she was giving proper answers and hence was well oriented. In this view of the matter, we see no impediment in relying on this Dying Declaration.

17. Mr.Sarda has submitted that since scribes of these two Dying Declarations Ex.23 and Ex.27 who had actually written them, were not examined, these Dying Declarations cannot be said to be proved. Here in respect of both these Dying Declarations P.W.6 and P.W.9 have stated that those Dying Declarations were in the handwriting of their assistants. But they were recorded as per the enquiries made by these witnesses and they were recorded before them. They have identified those Dying Declarations. Therefore we see no reason to disbelieve

these witnesses to the effect that these Dying Declarations were recorded as per the statement given by the deceased herself and which were recorded in the presence of those witnesses. In this connection Mr.Sarda has relied on the observation made by the Honourable Supreme Court in *Govind Rajan and Anr. Vs. State of Rajasthan, reported in 1993 Cri.L.J.* In that case the scribe who had written the Dying Declarations on Exhibit P-3 was not examined and the benefit was given to the accused. However, in the present case, the person in whose presence and on whose questioning the Dying Declarations were recorded, are examined by the prosecution.

18. Mr.Sarda further submitted that it was not possible that ridges of the thumb would appear below the thumb impression, because according the prosecution case the thumbs were burnt. In this connection it can be seen that the thumb impression below Ex.23 is not clear and there are no ridges visible and the thumb impression below Ex.27 is also not very clear. It can be seen that the evidence shows that the burns were

superficial to deep. Therefore in the absence of clear evidence to show that patient had suffered deep burn injuries on the thumb, nothing much can be held against the prosecution in that behalf as submitted by Mr.Sarda.

19. Mr.Sarda has further relied on the ratio laid down by the Division Bench of this Court in the case of ***Manik Vanaji Gawali Vs. State of Maharashtra, reported in 2013 Cri.L.J. 972***, in which it is held that the evidence led by the prosecution about mental state of the declarant can be classified as subjective and objective. It is only on the clear evidence led by the prosecution showing the manner in which the person recording Dying Declaration reaches his opinion, his subjective satisfaction can be proved. In this case, we find that the initial questions put by the S.E.M. does show that he made efforts to ascertain the fitness of state of mind of the declarant and only thereafter he had recorded the statement. In case of other two Dying Declarations the expert's opinion i.e. the Medical Officer's opinion about the fitness of mind was clear enough and

therefore there cannot be any doubt about the deceased being in a proper fit state of mind to give Dying Declaration.

20. Mr.Sarda has further submitted that there is a discrepancy in the Dying Declarations i.e. between Ex.23 and Ex.27. In Ex.27 it is mentioned that the Appellant himself poured water on the deceased after she was set ablaze; whereas in Ex.23 it is mentioned that after she suffered burn injuries, she came out of her house and at that time the neighbours poured water on her and tried to extinguish the fire. We do not see this as a major discrepancy or contradiction between the two Dying Declarations, because after the Appellant threw water on her, he immediately fled away from the spot. That by itself does not mean that the fire was extinguished completely and therefore when she came out of the house and when the neighbours poured water on her to extinguish fire, there cannot be any discrepancy between these two Dying Declarations.

21. Mr.Sarda further submitted that the articles seized from the spot were not sent for chemical analysis, neither there

is any evidence to show that there was any kerosene smell on the person of the deceased when she was admitted in the hospital. When the deceased was admitted in the hospital the fire was already extinguished as water was poured on her before she was taken to the hospital. Therefore there may not be any smell of kerosene. The absence of C.A. Report in respect of articles found on the spot is not material in the present case simply because the occurrence of the incident cannot be disputed. Since we are relying on the Dying Declarations, these other circumstances do not help the Appellant in his case.

22. In view of the discussion made in the foregoing paragraphs, we are satisfied that there is no merit in the Appeal and hence the following order:

ORDER

The Appeal stands dismissed.

(SARANG V. KOTWAL, J.)

(A. A. SAYED, J.)