

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 330 OF 2004

The State of Maharashtra,
Through Kum. Rajshri Ram Hajare,
R/o Katgaon Tq. Tuljapur
Dist. Osmanabad. ...Appellant

Versus

Pappu @ Jagannath Bhaurao Mehtre,
Age 21 years, R/o Katgaon Tq.Tuljapur
Dist. Osmanabad. ...Respondent

Mr. S. J. Salgare, Addl. Public Prosecutor, for appellant/ State.
Mr. S. P. Joshi, Advocate (Appointed) for respondent.

**CORAM : T. V. NALAWADE &
SMT.VIBHA KANKANWADI. JJ.**

DATE : 27-11-2018.

ORAL JUDGMENT : (Per SMT. VIBHA KANKANWADI, J.)

1. In present appeal the prosecution challenged the acquittal of the respondent from the offences punishable under Section 452, 354, 302 of Indian Penal Code, in Sessions Case No.41 of 2003 by learned Ad-hoc Additional Sessions Judge, Osmanabad.

2. The prosecution had come with a case that, deceased Rajshri Ram @ Ramchandra Hajare was aged 14 and was resident of village

Katgaon.. Tq. Tuljapur. She used to reside with parents, elder sister and younger brother. She had left school in about three years prior to 22-12-2002, but thereafter again took admission in 06th Standard. She attended her school in the morning on 21-12-2002 and came back. Her parents had gone to field. She was alone. Around 03.00 p.m. after noticing that she is alone, accused went to her house and tried to talk with her. She told that, her parents are not in house and therefore he should not come in the house. Yet accused entered the house and tried to jostle her with ill intention, pressed her breast. At that time she tried to shout but he gagged her mouth. He gave threat that, he would set to her fire by pouring kerosene. Still when she was resisting him, he took kerosene kept in a tin box from her own house and poured it on her person and asked her to shut out, and by asking whether he should set to her fire, ultimately put burning match stick on her clothes. When the fire broke, she started shouting and accused ran away. Neighbouring person by name Karbasappa Swami came and extinguished the fire. She had sustained burn injuries to her mouth, breast, stomach, thighs, back etc. She was taken to Katgaon Government Hospital and then shifted to Civil Hospital, Solapur.

3. While under treatment on the same day on 21-12-2002 her statement was recorded by Solapur Police and thereafter it was transmitted to Naldurg Police Station where offence vide Crime No.

218 of 2002 came to be registered under Section 452, 354, 307 of Indian Penal Code. Thereafter it appears that, police from Naldurg Police Station also recorded statement of Rajshri on 22-12-2002 and prior to that on 21-12-2002 Special Judicial Magistrate, Solapur D. S. Mane had also recorded her statement.

4. After the registration of the offence, panchanama of the spot was carried out. Thereafter it appears that, Rajshri expired on 24-12-2002. The fact was informed to Sadar Bazar Police Station, Solapur and therefore inquest panchanama was executed and the dead body was sent for post mortem which was carried out at the General Hospital at Solapur. At the time of executing spot panchanama certain articles were seized. Those articles were sent for chemical analysis. Statements of the witnesses were recorded, accused came to be arrested. After the completion of the investigation, charge-sheet was filed.

5. Accused was produced before the learned trial Court from time to time from jail. Charge was framed against him for the offences punishable under Section 452, 354, 302 of Indian Penal Code. The contents of the charge were read over and explained to him. He pleaded not guilty. Trial has been conducted. Prosecution has examined in all nine witnesses in order to bring home the guilt of the accused. After hearing both the sides and perusing the

evidence on record the learned trial Court has acquitted the accused. The said acquittal is challenged in this appeal. The appeal was admitted by this Court on 17-08-2004.

6. It appears that, thereafter the respondent – original accused remained absent, and therefore bailable warrants were issued. Report has been received that he is not found at the place where he is residing. So also his surety is also not residing at the said place. Under such circumstance learned advocate Mr. S. P. Joshi came to be appointed by this Court to assist this Court and represent the sole respondent as the earlier advocate was allowed to withdraw his appearance.

7. Heard learned Addl. Public Prosecutor Mr. S. J. Salgare for State – appellant and learned advocate Mr. S. P. Joshi appointed. Perused the record and proceedings. It has been submitted on behalf of the appellant that the learned trial Court did not consider the evidence properly. There were three dying declarations of the deceased recorded by various authorities. All the three dying declarations are consistent and in all the three dying declarations the deceased has categorically stated that when she was alone, accused tried to do ill act with her and when she resisted, he had poured kerosene on her person and set her to fire. It has also come on record through medical evidence that, she was in fit state to give the

dying declaration. No doubt the neighbouring person who had come to extinguish the fire had turned hostile, yet there was positive evidence in the form of dying declarations which could have been believed by the learned trial Court. Those dying declarations have been discarded on technical grounds. Taking into consideration the fact that, she had received about 63 % of burns, she would not have falsely implicated the accused. Even the accused has not given any reason as to why she could have implicated him. The C.A. Report is supporting the prosecution story, therefore learned trial Court ought to have convicted the respondent.

8. Per contra, the learned advocate appointed supported the reasons given by the learned trial Court while acquitting the accused.

9. The prosecution has relied on direct as well as indirect evidence. Direct evidence is in the form of testimony of neighbouring person P.W.4 Karbasappa Swami. He has deposed that, on 21-12-2002 he was in the shop which was adjacent to the house of deceased. He heard shouts and therefore went to her house, at that time he found deceased had come out in burnt condition. Therefore, with the help of his towel he extinguished the fire. He does not claim that anything was disclosed by deceased to him. He also does not state that, he had seen accused running from the house of

deceased. Therefore, taking into consideration the hostility of this witness, questions in the nature of cross were put to him by prosecution, however nothing futile has been extracted. Thus the direct evidence is not helpful.

10. The indirect evidence on which the prosecution is relying is in the form of two dying declarations, one is recorded by P.W.1 Maruti Gujale, the Police Head Constable, who was attached to Civil Hospital Police Chowki on that day. He has proved dying declaration (Exhibit 20). Another dying declaration is recorded by P.W.6 D. S. Mane, the Special Judicial Magistrate on 21-12-2002. He has proved dying declaration (Exhibit 34). P.W.7 Dr. Ravindra Bhosle is the Medical Officer who had given endorsement on Exhibit 34. P.W.8 Dr. M. H. Gunalkar is the Medical Officer who had given endorsement on Exhibit 20. Both the dying declarations have been disbelieved by the learned trial Court on the ground that, no explanation is coming forward as to why below Exhibit 20 there is thumb impression and why there is signature below Exhibit 22. Even the doctors who had given the endorsements have not explained as to what was the position of the thumb or the hand. If we perused the post mortem report, the left upper limb is stated to have received 09 % burns. Inquest panchanama (Exhibit 27) also shows that, they were burn injuries to both the hands. The position of palms is not specifically written. Important point is that, when at the time of Exhibit 20 she

was unable to sign, how she could have signed it when Exhibit 34 was recorded. Exhibit 20 was recorded between 08.00 p.m. to 08.10 p.m. and Exhibit 34 was recorded at 09.15 p.m. Further fact which is creating doubt in respect of Exhibit 34 is, at the time of giving endorsement it appears that P.W.8 Dr. M. H. Gunalkar gave endorsement at 09.15 p.m. when the dying declaration was yet to start, and therefore, at the end again endorsement is given and at that time also the time is mentioned as 09.15 p.m. It is impossible when the girl had sustained 63 % of burns, her statement would be recorded within fraction of seconds. The learned trial Court has also taken a note of difference in the ink of the main part of Exhibit 34, the first page, and the overleaf which is signed by P.W.6 D. S. Mane. It has been specifically doubted that, somebody else had recorded the said statement and P.W.6 D. S. Mane has merely signed it. The said observation appears to be true.

11. In Exhibit 20, if it is to be taken as true, it is specifically mentioned that, the deceased was having relations with accused since many days prior to her statement. No doubt only word 'relations' (संबंध) is appearing and not in particular 'physical relations' yet they can be inferred because word ' प्रेमसंबंध ' is not used. If this fact then is to be believed, when she was already having relations with him, why she should object to his coming to

the house when nobody else was present in her house, and when he tried to catch up her. Therefore, this creates further doubt. One more fact that is required to be considered from both the dying declarations that, she says that when she refused, immediately the accused took out the plastic can containing kerosene, poured it on her and set her to fire. The surprising part is that, it has not come on record as to how much times earlier accused had been to the house of deceased, how he could know the place where the match box is kept and where the kerosene can is kept. If we perused the spot panchanama, then the house consist of two rooms and the incident is stated to have taken place in the second room and not in the kitchen. It is unbelievable that, the kerosene can would have been kept in the second room and not in the kitchen. How she could not have resisted the accused is a question. It will not be out of place to mention here that, P.W.2 Kamlakar Baburao Gulve, Police Head Constable, had also recorded statement of deceased on 22-12-2002. However, he has not obtained any endorsement regarding the mental status of deceased. He says that, he had obtained signature of deceased. If that signature is compared with the signature on Exhibit 34, then definitely both these signatures are different and again if she was not able to sign on 21-12-2002, how she could have signed it on 22-12-2002. Therefore, all the three dying declarations even of we considered, Exhibit 36 as dying declaration, they are

unbelievable and untrustworthy.

12. Here in this case, none of the family members of deceased have been examined who could have stated that, on the point of oral dying declaration. Therefore, taking into consideration all these aspects the learned trial Court had taken a possible view which need not be disturbed and merely because second view is possible the appellate Court cannot take the second view. Hence, following order.

ORDER

- 1) Appeal is hereby dismissed.
- 2) Fees of the learned counsel appointed on behalf of the respondent – first informant is quantified @ of Rs.5000/- (rupees five thousand only) which is to be paid through High Court Legal Services Authority, Sub-Committee, Aurangabad.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.