

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.595 OF 2016

SANTOSH JAGANNATH PINGLE)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Megha Bajoria, Appointed Advocate for the Appellant.

Mr.Amit Palkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

**DATE : RESERVED ON 29th AUGUST 2019
PRONOUNCED ON 3rd SEPT. 2019**

JUDGMENT :

1 By this appeal, the appellant/convicted accused is challenging order dated 29th June 2016 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.25 of 2009, thereby convicting him of the offence punishable under Section 304 Part II of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 6 years.

2 Facts, in brief, leading to the prosecution of the appellant/convicted accused and the resultant conviction, can be summarized thus :

(a) Appellant/convicted accused Santosh Pingle married Meera Popat Rode (since deceased) 3½ years prior to the incident and thereafter, she went to cohabit with the appellant/convicted accused. After few months, the appellant/convicted accused started subjecting her to cruelty. He used to beat her under influence of liquor and was demanding money from her. This resulted in Meera Pingle (since deceased) taking shelter in her parental house for about two years. After mediation by elders, there was settlement and Meera Pingle (since deceased) started cohabiting with the appellant/ convicted accused in premises of PW5 Kashinath Pachange along with the appellant/convicted accused.

(b) The incident in question allegedly took place at about 9.30 p.m. of 23rd September 2008 in the residential room of the

couple. The appellant/convicted accused returned to the room after consuming liquor and Meera Pingle (since deceased) tried to convince him not to consume liquor, as their married life is being spoiled. Upon that, the appellant/convicted accused started abusing her and in a fit of anger poured kerosene on her person and set her ablaze. Meera Pingle (since deceased) started shouting and therefore, the appellant/convicted accused poured water by bucket on her person and took her to the Sassoon Hospital, Pune, for medical treatment.

- (c) On getting information about admission of Meera Pingle (since deceased) at the Sassoon Hospital with burn injuries, PW3 Yashwant Bhosale, Police Head Constable attached to the Police Outpost of Sassoon Hospital visited the Burns Ward and after getting condition of Meera Pingle (since deceased) certified from PW4 Dr.Prashant Moon, recorded her statement Exhibit 48. It was sent to Police Station Shirur where Crime No.252 of 2008 for the offence

punishable under Sections 307 and 504 of the Indian Penal Code came to be registered against the appellant/convicted accused.

- (d) During the course of medical treatment on her, Meera Pingle (since deceased) succumbed to burn injuries on 28th September 2008. Postmortem examination on her dead body came to be conducted by PW6 Dr.Ajay Taware.
- (e) On completion of routine investigation, the appellant/convicted accused came to be charge-sheeted for the offence punishable under Section 302 of the Indian Penal Code.
- (f) The learned trial court framed and explained the Charge for the offence punishable under Section 302 of the Indian Penal Code to the appellant/convicted accused. He pleaded not guilty and claimed trial. In support of the Charge, the prosecution has examined in all six witnesses. Subhash Rode - cousin of deceased Meera Pingle (since deceased) is examined as PW1. Panch witness Shankar Kale is examined

as PW2. Spot Panchnama is at Exhibit 41. Yashwant Bhosale, Police Head Constable is examined as PW3. Dr.Prashant Moon, Medical Officer with the Sassoon Hospital, Pune, is examined as PW4. Kashinath Pachange, the person at whose premises the couple was residing is examined as PW5. Dr.Ajay Taware, Associate Professor in Forensic Medicine, came to be examined as PW6.

- (g) Defence of the appellant/convicted accused was that of total denial. After hearing the parties, the learned trial court, by the impugned judgment and order, was pleased to convict the appellant/convicted accused of the offence punishable under Section 304 Part II of the Indian Penal Code and he came to be sentenced accordingly, as indicated in the opening paragraph of this judgment.

3 I have heard Mrs.Megha Bajoria, the learned advocate appointed to represent the appellant/convicted accused at the costs of the State. She vehemently argued that the dying

declaration allegedly recorded by PW3 Yashwant Bhosale, Police Head Constable, cannot be relied upon for basing conviction in such a serious offence. Meera Pingle (since deceased) sustained burn injuries on 23rd September 2008 and she, ultimately, succumbed to burn injuries on 28th September 2008. As such, there were ample opportunities with the prosecution to get the dying declaration of Meera Pingle (since deceased) recorded through the Executive Magistrate. This was not done. Similarly, according to the learned advocate, the dying declaration allegedly recorded by PW3 Yashwant Bhosale, Police Head Constable, is not corroborated in material particulars by other evidence adduced by the prosecution. Except the dying declaration, there is no other evidence to connect the appellant/convicted accused with the crime in question, and therefore, by granting benefit of doubt, he needs to be acquitted. The learned advocate further argued that the sentence imposed on the appellant/convicted accused is also harsh.

4 The learned APP supported the impugned judgment and order of conviction as well as the resultant sentence.

5 I have carefully considered the rival submissions and also perused the record and proceedings including the oral as well as documentary evidence adduced by the prosecution.

6 Entire case of the prosecution is based on the dying declaration of deceased Meera Pingle, given by her on 24th September 2008 and recorded by PW3 Yashwant Bhosale, Police Head Constable, at Burns Ward of the Sassoon Hospital, Pune. The court will have to consider whether this dying declaration is reliable and trustworthy. It will have to be ascertained whether Meera Pingle (since deceased) was in a position to make a declaration regarding her cause of death after sustaining the burn injuries. There is no rule of law that the dying declaration must be recorded by a particular authority. What is required to be seen is, whether the declarant was in a position to make a declaration and whether such declaration is truthful and trustworthy.

7 In the case in hand, evidence of PW1 Subhash Rode, who happens to be cousin of deceased Meera Pingle, makes it clear that Meera Pingle (since deceased) was used to be subjected to cruel treatment by the appellant/convicted accused and therefore, she had taken shelter of parental house, where she stayed for about eight to nine months. This witness further deposed that Meera Pingle (since deceased) used to visit her parental house frequently. It is in evidence of PW5 Kashinath Pachange, who had given his premises to the couple free of charge, that Meera Pingle (since deceased) came to reside with the appellant/convicted accused just two or four days prior to the incident in question. It is, thus, seen that, matrimonial life of deceased Meera Pingle with the appellant/convicted accused was not going on smoothly.

8 On this backdrop, it is in evidence of PW3 Yashwant Bhosale, Police Head Constable, that on 24th September 2008, while visit at the Police Outpost of the Sassoon Hospital, Pune, he

received information regarding admission of Meera Pingle (since deceased) with burn injuries. Under directions of the superior, he, therefore, went to Ward No.25, Burns Ward, and requested the attending Medical Officer to examine the patient and to permit him to record her statement.

9 At this juncture, evidence of PW4 Dr.Prashant Moon, Resident Medical Officer, Pune, becomes relevant. He was on duty and was present at the Burns Ward, at the time of visit of PW3 Yashwant Bhosale, Police Head Constable. It is in evidence of PW4 Dr.Prashant Moon that upon being requested by police, he examined Meera Pingle (since deceased) and found her to be in conscious state of mind and oriented to the time, place and person to give statement. Then, as stated by PW4 Dr.Prashant Moon, the police recorded statement of Meera Pingle (since deceased).

10 What was stated by Meera Pingle (since deceased), regarding cause of her death, has come on record through evidence of PW3 Yashwant Bhosale, Police Head Constable. He

stated that the patient told her name as Meera Santosh Pingle (since deceased) and disclosed to him that at about 9.30 p.m. of 23rd September 2008, the appellant/convicted accused returned to the house in drunken condition and when she questioned him, he started abusing her. Thereafter, in a fit of rage, he poured kerosene on her person and set her on fire. As per version of this witness, he recorded statement of Meera Pingle (since deceased) in presence of the Medical Officer and even after recording of the statement, he obtained endorsement of the Medical Officer on it, regarding condition of Meera Pingle (since deceased).

11 PW4 Dr.Prashant Moon was cross-examined at length in order to demonstrate that deceased Meera Pingle was not in a position to make a declaration. For that purpose, percentage of burn injuries sustained by Meera Pingle (since deceased) was referred and it is brought on record that burn injuries caused loss of protein, water and electrolyte causing convulsions and vomiting. However, it was not suggested to this Medical Officer that Meera Pingle (since deceased) was, infact, suffering from

convulsions as well as vomiting at the time of recording of her statement. Cross-examination of PW4 Dr.Prashant Moon reveals that as soon as Meera Pingle (since deceased) was admitted to Burns Ward, he had attended her. He has stated in his cross-examination that police directly approached him since he was present in the Burns Ward. There is nothing in the cross-examination to suggest that Meera Pingle (since deceased) was not in a position to speak to make a declaration. Evidence of PW4 Dr.Prashant Moon is gaining full corroboration from the record of medical condition of Meera Pingle (since deceased), made by him on the dying declaration of Meera Pingle (since deceased), recorded by PW3 Yashwant Bhosale, Police Head Constable. PW4 Dr.Prashant Moon, prior to starting of recording of the dying declaration, has noted that Meera Pingle (since deceased) was in a conscious state of mind and oriented to time, place and person, to give a valid statement. Similarly, after recording of the dying declaration, this witness again examined Meera Pingle (since deceased) and noted that she was in sound state of mind even at the end of recording of her statement. With this evidence, the

prosecution has proved that deceased Meera Pingle was in a fit condition to make a declaration about her cause of death.

12 Dying declaration of deceased Meera Pingle, which is at Exhibit 48, shows that, after his return to the house in an intoxicated condition, Meera Pingle (since deceased) attempted to convince the appellant/convicted accused, not to consume liquor and upon that, he started abusing her. Then, the appellant/convicted accused poured kerosene on her person and set her ablaze, but when she started shouting, he poured water by bucket and took her to the Sassoon Hospital for medical treatment.

13 This dying declaration of Meera Pingle (since deceased) is gaining full corroboration from the situation prevalent on the spot of the incident, recorded in presence of the panch to the panchnama of the spot of incident, PW2 Shankar Kale. His evidence as well as recitals in the Spot Panchnama Exhibit 42 show that the room where the couple was residing was

smelling kerosene. Container of kerosene was found on the spot apart from matchbox and burnt matchstick. Burnt pieces of saree were also found on the spot. These articles were seized by police. On chemical analysis of the container, the same was found to be containing kerosene. Thus, the dying declaration of Meera Pingle (since deceased) is gaining corroboration in material particulars from this evidence. Even evidence of Autopsy Surgeon PW6 Dr.Ajay Taware shows that Meera Pingle died because of shock, due to burn injuries.

14 This evidence makes it clear that Meera Pingle died homicidal death and her death was caused by the appellant/convicted accused.

15 The learned trial court rightly came to the conclusion that the appellant/convicted accused caused her death with the knowledge that he is likely to cause the death by such act, but the offence punishable under Section 302 of the Indian Penal Code is not made out, as the proved act is not covered by any clauses of

Section 300 of the Indian Penal Code. Ultimately, it was the appellant/convicted accused, who extinguished the fire when Meera Pingle (since deceased) cried for help, after he set her ablaze, in a fit of rage. The appellant/convicted accused himself took her to hospital for medical treatment.

16 So far as sentence imposed on the appellant/convicted accused is concerned, on finding him guilty of the offence punishable under Section 304 Part II of the Indian Penal Code, the same also needs no interference. The learned trial court has rightly awarded sentence of rigorous imprisonment for a period of six years, by taking a lenient view in the matter.

17 Hence, the appeal is devoid of merit, and therefore the order :

ORDER

The appeal is dismissed.

(A. M. BADAR, J.)