

rkmore

Digitally
signed by
RAJSHREE
KISHOR
MORE
Date:
2021.08.26
13:24:55
+05'30

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.838 OF 1998

1. Smt.Vimal @ Parvati Bhagwan Sawant]
Age : 57 years,]
 2. Anil Bhagwan Sawant (Abated)]
Age : 27 years,]
 3. Mrs.Shashikala @ Ashwini Anil Sawant]
Age : 25 years,]
 4. Sunil Bhagwan Sawant,]
Age : 25 years,]
All residents of Nagobachi Wadi,]
Near Aradhana, Naupada, Thane.].. Appellants/accused
- vs.
- The State of Maharashtra].. Respondent

Mr.Niranjan Mundargi a/w Mr.Kunal Ambulkar a/w Ms.K. Mehta i/b V.B. Shinde for Appellants.

Mrs.M.M. Deshmukh, APP for the State.

**CORAM : PRASANNA B. VARALE &
N.R.BORKAR, JJ.**

**RESERVED ON : 22.07.2021
PRONOUNCED ON : 26.08.2021**

JUDGMENT : (PER : N.R.BORKAR, J)

1] This appeal takes an exception to the Judgment and order dated 28th October, 1998 passed by the Second Additional Sessions Judge, Thane in Sessions Case No.271 of 1996.

2] The appellant Nos.1 to 4 were the accused Nos.1 to 4 respectively before the trial Court. By the impugned Judgment and

rkmore

order, accused Nos.1 to 3 have been convicted for the offence punishable under Section 302 read with 34 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for life and to pay fine of Rs.100/- each and in default of payment of fine to suffer rigorous imprisonment for a period of one month. The accused Nos.1 to 3 have been further convicted with accused No.4 for the offence punishable under Section 498 A read with 34 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for 3 years and to pay fine of Rs.100/- each and in default of payment of fine to suffer further rigorous imprisonment for a period of one month. The trial Court acquitted the accused No.4 of the offence punishable under Section 302 of the Indian Penal Code.

3] The deceased Meena was the wife of accused No.4 Sunil. The deceased was married to accused No.4 Sunil on 19th May, 1995 and it was their love marriage. Accused No.1 is the mother of accused No.4. The accused No.2 was the brother of the accused No.4, who died during the pendency of appeal. The accused No.3 is wife of accused No.2.

4] It is the case of the prosecution that the deceased, after the marriage, came to cohabit with the accused. All the accused were residing together. Accused Nos.1 to 3 used to instigate accused no.4 to ill-treat the deceased. At the instance of accused Nos.1 to 3, accused No.4 used to beat the deceased. The accused Nos.1 to 3 were suspecting the character of the deceased as the marriage of the deceased with the accused No.4 was love marriage. They were not allowing the deceased to go out of the house and were always keeping watch on her whenever she used to go out of the house.

rkmore

5] The incident took place on 19th June, 1995. It is alleged that on the day of incident, accused No.4 came home from his workplace at about 6.00 p.m. After coming home the accused No.4 slapped the deceased as accused Nos.1 to 3 told him something about her. Accused No.4 then went to take bath. According to the prosecution the washroom where the accused No.4 went to take bath was located outside the house of the accused. It is alleged that at that juncture, accused Nos.1 and 3 latched the door of their house from inside. The accused No.2 stood at the door. The accused Nos.1 and 3 then poured kerosene on the person of the deceased and then they set her on fire. It is alleged that accused Nos.1 to 3, after setting the deceased on fire went out and latched the door of the house from outside. Due to burn the deceased started shouting. After some time the accused Nos.1 to 4 came inside. They then poured water on the person of the deceased to extinguish the fire. According to the prosecution, the deceased was then taken to the hospital of Dr. Sapatnekar and was admitted there.

6] On the basis of statement of the deceased, crime vide CR No. I-116/95 for the offence punishable under Section 307 read with 34 of the Indian Penal Code was registered against the accused. The deceased succumbed to the burn injuries on 24th June, 1995.

7] On completion of investigation, charge-sheet was filed against all the accused for the offences punishable under Section 302, 498A read with 34 of the Indian Penal Code.

8] The accused were charged and tried for the abovesaid offences. As stated earlier the trial court convicted the accused Nos.1 to 4 by the impugned Judgment and order.

rkmore

9] We have heard learned counsel for the appellants and learned APP for the State.

10] Learned counsel for the appellants has submitted that the only evidence against the appellants/accused in the present matter is in the form of six dying declarations, out of which three are oral dying declarations allegedly made by the deceased to her parents and brother and three written dying declarations allegedly made to Police Officers and Special Executive Magistrate.

11] It is submitted that the evidence on record will show that the deceased was completely burnt. It is submitted that the evidence on record is not sufficient to conclude that, the deceased was fit to make statement at any point of time. It is submitted that in such situation the trial Court was not justified in relying upon the alleged dying declarations and convicting the appellants/accused.

12] It is further submitted that there is no corroborative evidence in the matter. It is submitted that according to the prosecution, accused Nos.1 to 3 were suspecting the character of the deceased as her marriage with the accused No.4 was love marriage and they were not allowing the deceased to go out of the house. It is submitted that the parents of the deceased has admitted that the deceased came to their house 5 to 6 times during the period from 19th May, 1995 to 19th June, 1995. It is submitted that the trial Court was, therefore, not justified in holding that the prosecution has proved its case against the appellants/accused beyond reasonable doubt.

13] On the other hand, learned APP has submitted that all the six dying declarations are consistent with each other. It is submitted that in

rkmore

absence of any material to doubt the veracity of the dying declarations, the trial Court was justified in relying and convicting the appellants/accused on the basis of said dying declarations. It is submitted that the Appeal thus needs to be dismissed.

14] According to all the six dying declarations on the day of incident, accused No.4 came home from his workplace at about 6.00 p.m. After coming home, the accused No.4 slapped the deceased as the accused Nos.1 to 3 told him something about her. The accused No.4, then went to take bath. At that juncture, the accused Nos.1 to 3 latched the door of the house from inside. The accused No.2 stood at the door. The accused Nos.1 and 3, then poured kerosene on the person of the deceased and then they set her on fire.

15] PW 10 Shri Hiremath has recorded the first dying declaration. According to him on 19th June, 1995 he was on duty as Police Station Officer at Naupada Police Station. At about 6.00 p.m. he received information about the incident in question. He went to the hospital of Dr.Sapatnekar. He obtained the opinion of resident Medical Officer Dr. Vaishali Badave about the fitness of the deceased to give statement. He then recorded the statement of the deceased. The statement of the deceased is at Exhibit 38.

16] To prove that the deceased was fit to give statement (Exhibit 38), the prosecution has examined PW 13 Dr. Sau. Jaijani Subodh Bhade. According to PW 13 on 19th June, 1995 she was working as Medical Officer in the hospital of Dr. Sapatnekar. According to her on that day police officer came to the hospital to record the statement of the deceased. At that time, she examined the deceased and found that she was conscious and in a position to give statement. The Police

rkmore

Officer recorded the statement of the deceased and then she issued certificate on the statement that “the patient was conscious and in a position to give statement”. The said endorsement is at Exhibit 58. She has further stated that on the same day PW 9 Mrs.Shinde the Special Executive Magistrate (SEM) came to the hospital to record the statement of the deceased. She examined the deceased and found that she was conscious and was in a condition to give statement. Then she put endorsement on the statement. PW 9 then recorded the statement of the deceased. The statement is at Exhibit 33 and endorsements are at Exhibit 59 and 60.

17] In the cross-examination conducted on behalf of the accused, PW 13 has stated timing of endorsement at Exhibit 58 as 8.45 p.m. and endorsement at Exhibits 59 and 60 as 10.00 p.m. She has stated that she does not remember whether both the statements were recorded in her presence or not as she was busy in giving medical treatment.

18] According to PW 10 Shri Hiremath he obtained the opinion of resident Medical Officer Dr. Vaidehi Badve. The name of PW 13 is not Dr. Vaidehi Badave. However, there is no cross-examination in that respect. Therefore, we will presume that PW 13 is the same Medical Officer who had examined the deceased on the day of recording of statements of the deceased by PW 9 and PW 10. In this context, the evidence of PW 9 is relevant.

19] According to PW 9 Mrs. Shinde, SEM, on 19th June, 1995 she was called at Dr. Sapatnekar Hospital. She went there at about 7.00 to 7.15 p.m. The doctor was not present there. Hence, she did not seek opinion of the doctor. According to PW 9 the deceased was slightly conscious and was slightly talking. She put the questions to the

rkmore

deceased and recorded her answers. According to her, the police obtained endorsement of the doctor below the statement.

20] In the cross-examination PW 9 has admitted that while the statement was being recorded, sister of the deceased was present. According to PW 9 she started recording the statement at about 7.15 p.m. and it was over by 7.30 p.m.

21] The evidence of PW 9 falsifies the claim of PW 13 that she examined the deceased before recording of the statement by PW 9. According to PW 9, the statement was over by 7.30 p.m., whereas according to PW 13 the timing of endorsement on it, is 10.00 p.m. It is thus apparent that the endorsement at Exhibits – 59 and 60 was obtained subsequently. Considering overall facts and circumstances, it would not be safe to rely upon the alleged dying declarations recorded either by PW 10 Shri Hiremath or PW 9 Mrs. Shinde, SEM.

22] PW 12 Shri Jadhav, the Investigating Officer has recorded the third written dying declaration on the next day. It is not understood as to why the said dying declaration was recorded when there were already two dying declarations recorded by PW 9 and PW 10. According to PW 12 on 20th June 1995 he went to the Dr. Sapatnekar's hospital and recorded the statement of the deceased. PW 12 has admittedly not obtained the opinion of doctor about the fitness of the deceased to give statement. It is not the case of the prosecution that condition of the deceased was improved on the next day. Considering this fact no reliance can be placed on third written dying declaration also.

rkmore

23] This takes us to oral dying declarations. According to PW 1 Guru Bhoir, the father of the deceased, on 19th June, 1995 at about 7.00 p.m. to 7.30 p.m. he received information that the deceased has been admitted in the hospital of Dr. Sapatnekar due to burn injuries. He went there. Upon enquiry by PW 1 the deceased disclosed to him that at about 6.00 p.m. the accused No.4 came home from his workplace. The accused Nos.1 to 3 told him something about her. The accused No.4 then slapped her. The accused No.4 then went to take bath. At that time, accused Nos.1 and 3 came inside the room. Accused No.3 latched the door from inside. Accused No.2 stood at the door of the house. Accused Nos.1 and 3 then poured kerosene on her person and then they set her on fire. Accused Nos.1 to 3 then went out of the room and latched the door from outside. According to PW 1 after some time accused Nos.1 to 4 came inside and poured water on her person to extinguish the fire. Accused Nos.2 and 4 then took her to hospital.

24] In the cross-examination conducted on behalf of the accused. PW 1 has admitted that the deceased was completely burnt.

25] The evidence of PW 2 -Pramod Bhoir, the brother of the deceased in relation to oral dying declaration is similar to the evidence of PW 1. PW 2 has also admitted that the deceased was completely burnt.

26] The evidence of PW 3 Anandi Bhoir the mother of the deceased in relation to oral dying declaration is also similar to the evidence of PW 1.

rkmore

27] If the deceased was completely burnt, then it was necessary to bring on record that the deceased was conscious after the incident and was in a position to talk. However, there is no evidence to that effect. In absence of such evidence, it would not be safe to rely upon the evidence of PW 1 to PW 3 in respect of alleged oral dying declarations.

28] According to PW 1 to PW 3 accused Nos.1 to 3 were suspecting the character of the deceased as it was love marriage of the deceased with accused No.4. However, they do not say that accused Nos.1 to 3 were against the marriage of accused No.4 with the deceased. If there would have been any issue of the character of the deceased, then, the accused Nos.1 to 3 would not have agreed for the marriage of accused No.4 with the deceased.

29] According to PW 1 to PW 3, the accused were not allowing the deceased to come to their house and they were keeping watch on her. PW 1 has, however, admitted that deceased came to his house 4 to 5 times between 19th May 1995 to 19th June, 1995. PW 2 has admitted that their relations with the accused were strained.

30] Considering the facts and circumstances, the possibility of an afterthought attempt by PW 1 to PW 3 to make the death of the deceased as homicidal and to implicate the accused cannot be ruled out. We are constrained to say so because we see no reasons for the accused No.3, who is also the daughter-in-law of accused No.1 to develop so much of animosity against the deceased within a short period of one month that she would go to extent of committing the murder of the deceased.

rkmore

31] The prosecution has examined neighbours of the deceased. However, they have not supported the prosecution case. On the contrary, they have stated that the accused were behaving nicely with the deceased.

32] The trial Court was, therefore, not justified in convicting the appellants/accused. In the result, following order is passed :

ORDER

1] Criminal Appeal is allowed.

2] The conviction of **appellant No.1 Smt.Vimal @ Parvati Bhagwan Sawant** and **appellant No.3 Mrs.Shashikala @ Ashwini Anil Sawant** for the offences punishable under Sections 302, 498A read with 34 of the Indian Penal Code and **appellant No.4 Sunil Bhagwan Sawant** for the offence punishable under Section 498A read with 34 of the Indian Penal Code vide judgment and order dated 28th October, 1998 passed by the Additional Sessions Judge, Thane in Sessions Case No.271 of 1996 is hereby quashed and set aside.

3] Appellant Nos.1,3 and 4 are acquitted of all the charges.

4] The fine, if any paid by appellants No.1,3 and 4, be refunded to them.

5] Bail bonds of appellants No.1,3 and 4 stand cancelled.

6] Criminal Appeal stands disposed of accordingly.

[N.R.BORKAR, J]

[PRASANNA B. VARALE, J]