Mafabhai Nagarbhai Raval vs State Of Gujarat on 14 August, 1992

Equivalent citations: AIR1992SC2186, 1992CRILJ3710, JT1992(4)SC555, 1992(2)SCALE170, (1992)4SCC69, 1992(2)UJ637(SC), AIR 1992 SUPREME COURT 2186, 1992 (4) SCC 69, 1992 AIR SCW 2592, 1992 CRILR(SC MAH GUJ) 599, (1992) 4 JT 555 (SC), 1992 SCC(CRI) 810, (1992) 2 LS 16, 1992 (2) UJ (SC) 637, 1992 UJ(SC) 2 637, (1992) SC CR R 654, (1993) 1 GUJ LH 518, (1993) MAD LJ(CRI) 17, (1993) 1 PAT LJR 34, (1992) 2 RECCRIR 505, (1992) 2 CURCRIR 247, (1992) 2 CRICJ 284, (1992) ALLCRIR 540, (1993) ALLCRIC 298, (1993) 1 APLJ 5, (1992) 2 CHANDCRIC 169, (1992) 3 ALLCRILR 459

Author: N.P. Singh

Bench: N.P. Singh

ORDER

K. Jayachandra Reddy, J.

1. This is an appeal under Section 379 Cr.P.C. read with Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. The sole accused is the appellant before us. He was tried for an offence punishable under Section 302 I.P.C. The gravamen of the charge was that on the night of 9.7.78 at mid night he poured kerosene oil on Bai Gauri the deceased in this case and set fire as a result of which she died on the next day. The case rested mainly on the dying declarations recorded by the Doctor and the Magistrate. The learned Sessions Judge was not prepared to act upon the dying declarations and accordingly acquitted the appellant. The State preferred an appeal. The High Court allowed the appeal and convicted the appellant under Section 302 I.P.C. and sentenced him to undergo imprisonment for life. Hence the present appeal.

2. Learned Counsel for the appellant submitted that the deceased had serious burns on her and it would not have been possible for her to make dying declarations and that P.W. 2 the Doctor who recorded the first dying declaration has not truly recorded the same in the words of the deceased and that his evidence itself shows that the deceased would not have been in a position to make the declaration. It is also his submission that P.W. 3 the Executive Magistrate who recorded the second dying declaration did not record the same in the form of questions and answers and the statement recorded by him cannot be taken to be the true version alleged to have been given by the deceased.

3. The deceased aged about 40 years was the widow of one Savaji and was living in a wooden cabin near the maternity hospital in Harij and she was maintaining herself by doing casual work in the maternity hospital. She developed illicit intimacy with the accused. Her grown-up children were dissatisfied with her character and other members of her community were also dissatisfied. Since then she was living alone in the wooden cabin near the maternity hospital. There was some quarrel between the accused and the deceased. At about midnight on 9.7.78 the accused went to her cabin and sprinkled kerosene oil on her and set fire to her clothes and then fled. The deceased ran from her cabin inside the compound of the maternity hospital raising cries. One Patavala Motibhai came there and put a quilt on her body. The said Patavala Motibhai went and informed the Medical Officer, P.W. 2 of the Government Hospital who immediately ran to the spot and separated the burnt clothes from her body and gave first aid. He questioned as to who had set lire and the deceased replied that the accused was the culprit. P.W. 2 recorded her statement which is the first dying declaration in the case. P.W. 2 shifted her to the hospital and he himself went to the police station and gave a report. The police Jamadar also recorded her statement in the hospital which is yet another dying declaration in the case. By that time information was sent to the Taluka Magistrate with a request to record the dying declaration. P.W. 3, the Taluka Magistrate went to the spot and he also recorded the dying declaration. The deceased died in the early morning of 10.7.78. Inquest was held over the dead body and post-mortem was conducted by P.W. 2. The learned Sessions Judge, in our view, has unnecessarily doubted the veracity of P.W. 2, the Doctor. He observed that the moment the flames had been seen by the deceased on her person she must have received a severe shock and the same must have become "graver and graver" and in that state of mind it is not believable at all that the deceased could keep balance of her mind and full consciousness so as to make the statement. With this initial doubt the learned Sessions Judge proceeded to examine the evidence of the Doctor. The Doctor stated that in some cases mental shock immediately does . not develop and that in the instant case the deceased developed the mental shock for the first time at 4 A.M. Thereafter it gradually increased. The learned Sessions Judge called it irresponsible statement. It is in the medical evidence that 99% of the body of the deceased was affected by extensive bums and that the clothes of the deceased were also burnt to ashes. Therefore, the learned Judge thought that it was not at all possible to believe that the lady might. have developed the shock only at 4 A.M. and he gave his firm opinion that the moment the deceased had seen the flames she must have sustained mental shock and these circumstances convinced him that right from the very beginning she must have been under a mental shock and on that ground the learned Judge disbelieved the Doctor. Likewise he has pointed out certain circumstances purely based on surmises and on his inferences. It is needless to say that the Doctor who has examined the deceased and conducted the post-mortem is the only competent witness to speak about the nature of injuries and the cause of death. Unless there is something inherently defective the court cannot substitute its opinion to that of the Doctor.

4. On the same process of reasoning the learned Sessions Judge has also doubted the evidence of P.W. 3, the Executive Magistrate. The learned Judge found fault with the procedure . adopted by the Executive Magistrate namely that he did not record the statement in the form of questions and answers. The learned Judge, in our view, without any basis reached the conclusion that the Executive Magistrate did not record the dying declaration exactly in the words stated by the deceased. There is third dying declaration recorded by the police Jamadar but we need not consider

the same.

5. It must be noted that P.W. 2 recorded the statement within five minutes and noted the time also in the statement. The High Court has rightly pointed out that both the dying declarations are true and voluntary. It is not the case of the defence that she gave tutored version. The entire attack of the defence was on the mode of recording the dying declarations and on the ground that the condition of the deceased was serious and she could not have made the statements. On these aspects as noted above, the evidence of the Doctor is relevant and important. We have gone through the evidence of the Doctor as well as that of the Executive Magistrate. We find absolutely no infirmity worth mentioning to discard their evidence; It therefore emerges that both the dying declarations arc recorded by independent witnesses and the same give a true version of the occurrence as stated by the deceased. The dying declarations by themselves are sufficient to hold the appellant guilty. The High Court has rightly interfered in an appeal against acquittal. The appeal is accordingly dismissed.