

Ganpat Mahadeo Mane vs State Of Maharashtra on 15 October, 1992

Equivalent citations: AIR 1993 SUPREME COURT 1180, 1992 AIR SCW 3442, 1993 SCC(CRI) 491, 1993 BBCJ 27, 1992 (6) JT 177, 1993 (1) UJ (SC) 213, 1993 (2) SCC(SUPP) 242, (1993) SC CR R 251, (1994) 1 DMC 616, (1993) EASTCRIC 47, (1993) 1 HINDULR 8, (1993) MARRILJ 220, (1992) 2 ORISSA LR 564, (1993) 1 RECCRIR 225, (1992) 3 SCJ 570, (1992) 3 CURCRIR 397, (1992) 2 CRICJ 641, (1993) ALLCRIC 71, (1993) 1 CHANDCRIC 134, (1992) 3 ALLCRILR 545, (1992) 3 CRIMES 633

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Bench: G.N. Ray

ORDER

K. Jayachandra Reddy, J.

1. The sole appellant herein was convicted by the trial court under Section 302 I.P.C. and sentenced to imprisonment for life for causing the death of his wife. The appeal preferred by him was dismissed by the High Court. Hence the present appeal.

2. The prosecution case is that the appellant along with his wife Smt. Shobha, the deceased in the case, was living in a room of Block No. 1 of Police Line at the Police Headquarters, Solapur. There were no other members of his family living with them. There used to be quarrels between the husband and the wife and the deceased complained about the same to her mother Smt. Draupadi, P.W. 2. The accused used to give lift to a lady constable on his motor cycle and the deceased got suspicious about his relationship with the said lady constable. As the deceased underwent an operation and was recovering, she stayed with her parents for a period of two months. About two days prior to the incident, the deceased was taken back by the accused to his house. On 30.5.79 at about 8.15 A.M. the accused is alleged to have poured kerosene oil on the deceased and set her on fire. The deceased sustained serious burn injuries. The accused went to the M.T. Section and managed to get a jeep and carried her to the hospital and got her admitted. P.W. 6, the Doctor on duty prepared the case papers and the deceased told P.W. 6 that her husband poured kerosene oil on her and set fire. P.VV. 2, the mother of the deceased, coming to know about the incident also came to the hospital. In the meanwhile the ward boy from the hospital gave information to the police. P. W. 5, Head Constable Inayat Hussain received the message and made an entry in the diary. P.W. 3, a

Police Constable also went to the hospital and he recorded the statement of the deceased wherein she stated that her husband was responsible for causing burns to her. P.W. 7 Head Constable Kasabe thereafter gave a requisition to the Taluka Executive Magistrate to record the dying declaration and he also registered the crime under Section 307 I.P.C. P.W. 4, the Executive Magistrate came to the hospital and recorded another dying declaration. The Doctor certified that she was conscious and in fit condition to make a statement. P.W. 11, S.I. took over the investigation and seized the incriminating articles. The deceased, however, died on the same night. He held the inquest over the dead body on 31.5.79. P.W. 12 Dr. Golli held the autopsy over the dead body and he found 97% burns. He opined that the injuries were ante-mortem and that death was due to extensive burns. P.W. 14 the Circle Inspector took over the investigation and filed the charge-sheet. The prosecution examined several witnesses and mainly relied on the dying declarations recorded by the Doctor, the Police and the Executive Magistrate. The accused when examined under Section 313 Cr.P.C. denied the offence and also added that he was in the M.T. Section when one Supervisor informed him that something unusual has happened in his house. Then he went to his house and found that his wife had actually caught fire and he extinguished the fire and came back to the M.T. section, took a jeep and earned the injured to the hospital. Both the courts below mainly relied on the dying declarations and convicted the accused.

3. Learned counsel for the appellant submitted that the deceased who suffered 97% burns would not have made so many dying declarations and at any rate the dying declarations are result of tutoring.

4. P.W. 6, the Doctor who proved Ex. P. 30 deposed that the deceased was conscious and stated that her husband poured kerosene oil on her and set fire. There is absolutely no reason to doubt his evidence. Then there is another dying declaration Ex. P. 33 recorded by the police constable which is also attested by the Doctor. Then finally we have Ex. P. 21 the dying declaration recorded by the Executive Magistrate which reads as under:

Exh. 21 Dying Declaration I, Shobba Ganpat Mane, age 24 years, occupation Household, residing at Solapur, on being asked, on solemn affirmation state that:

On 30-5-79 at 8-15 in the morning in my house, my husband by pouring I litre of kerosene oil on my person set fire to my person. My whole body was burnt and all clothes on my person were burned. My husband Ganpat tried to extinguish the fire by putting a chaddar on person. My all body was burnt. At that time my husband was near me. I do not remember whether I shouted. Immediately my husband brought me at General Hospital, Solapur after my body was burnt. After bringing there treatment was started. I am a Graduate. My husband was asking me to join the service since my marriage. My husband and his mother were continuously ill-treating me. Now I am conscious. I am speaking. I and my husband were living together. I suspect my husband and his mother. My both hands were burnt. I cannot sign or put my thumb impression. Fingers of both the hands are burnt and are bent towards the palm. I do not wish to say anything more than this.

This declaration given Dt. 30.5.79 Time 14-10 to 14-30 hours afternoon Before. SdA xxx Pt. is condition of 30.5.79 giving statement Executive Magistrate Sd/- xxxx North Solapur Sessions 30.5.79 1979. Exh. S. No. 21. Read and Recorded. Date - 10.1.1980 Sd/- xxxx Sessions Judge, Solapur.

This dying declaration recorded by P.W. 4, the Executive Magistrate is entitled to great weight. The Doctor also endorsed that the patient was in condition of giving the statement. P.W. 4, the Executive Magistrate in his evidence has clearly stated that he enquired the injured and recorded her statement as per her narration. In the cross-examination he admitted that he did not put different and separate questions. Learned Counsel for the appellant submitted that since the Executive Magistrate did not record the statement by way of questions and answers the recording is defective and therefore it should not be acted upon. We see no force in this submission. The form by itself is not important. The statement is clear. Because of the mere fact that the entire thing is not recorded by way of separate questions and answers, the value of the dying declaration is not detracted. Further, P.W. 4 the Executive Magistrate in his evidence has clearly stated that this is the version given by the deceased. The other dying declarations are also to the same effect. None of these dying declarations suffer from any infirmity. They are also corroborated by medical evidence and other circumstantial evidence.

5. Learned counsel further submitted that P. W. 2, the mother of the deceased deposed that the deceased told her that she falsely gave the name of the accused because of the apprehension that if she survived after the incident she would be held responsible for attempting to commit suicide. Placing reliance on this statement which is elicited in the cross-examination, the learned Counsel contended that the dying declarations should not be acted upon. We have perused the evidence of P.W. 2. She has prevaricated. In the chief examination she stated that there were domestic quarrels between her daughter, the deceased and the accused and coming to know of the occurrence she and her husband went and questioned the deceased who told them that the accused beat her, poured kerosene oil and set her on fire. Having stated so in the chief examination, in the cross-examination she introduced a different version that her daughter was conscious and on being questioned by them she told them that she got annoyed with her husband and she herself poured kerosene oil on her person and that if she survived after the said incident, she would be held responsible for the act and therefore he falsely gave the name of her husband as the person who poured kerosene oil and set fire. Then in the re-examination she was asked as to why she gave two statements for which she gave an evasive answer by stating that she did not want to offer any explanation concerning the contradiction involved in the two statements. This aspect has been considered by the courts below and it has been rightly held that in view of her evasive answer in the re-examination, the only inference is that certain circumstances like her affection for the grand-children must have compelled her to give such a version. In any event the version given by her in the cross-examination is not entitled to any weight and on the basis of such an evidence of P.W. 2, the dying declarations duly recorded by respectable witnesses can not be rejected. We see no ground to disagree with the findings of the courts below. The appeal is accordingly dismissed.