

Bombay High Court

Narendra S/O Vithhalrao Hingane ... vs State Of Maharashtra, Through ... on 18 July, 2016

Bench: B.R. Gavai

apeal487.14

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO.487 OF 2014.

APPELLANT: Narendra s/o Vitthalrao Hingane,
aged about 45 years, Occu: Labour,

R/o Shegaon, Distt.Amravati.

: VERSUS :

RESPONDENT: State of Maharashtra,

through Police Station Officer,
Police Station,Buttibori, Distt.
Nagpur.

Mr.U.R.Phasate, Advocate for the appellant.

Smt.Geeta R.Tiwari, Addl.Public Prosecutor for the State.

CORAM: B.R.GAVAI AND
V.M.DESHPANDE, JJ.

DATE: 18th JULY, 2016.

ORAL JUDGMENT (Per V.M.Deshpande, J.)

1. Being aggrieved by the judgment and order of conviction passed by the learned Sessions Judge, Nagpur dated 27th of March, 2014, in Sessions Trial No.328 of 2012, by which the appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code and was directed to suffer rigorous imprisonment for life and to pay a fine of Rs.1000/-, and in default of payment of fine to suffer Simple Imprisonment for three months, the appellant is before this Court.

2. The appellant faced a Charge that on 26 th of October, 2011 at about 5 p.m. at Bori town, Tq. and Distt. Nagpur, he did commit murder of his wife Sau.Kalpana by setting her on fire since she failed to give money for liquor to him.

3. The prosecution case, as it is disclosed during the course of the trial, can conveniently be stated as under :-

On 12th of November, 2011 Murlidhar Khonde (PW 1) set the law into motion by filing his report (Exh.16). On the basis of the said report, a Crime was registered against the appellant vide C.R.No.214 of 2011 by Police Station, Buttibori. According to the First Information Report, deceased Kalpana was his younger daughter and her marriage was performed with the appellant in the year 2006. After marriage, appellant became addict to liquor and under the influence of liquor he used to beat deceased Kalpana, which fact was disclosed to him by the deceased.

According to the First Information Report, deceased was working in 'Murarji Company' and the appellant was not doing any work.

On 26th of October 2011 he received intimation about the burning incident of Kalpana therefore he reached to the Medical College, Nagpur at 8 p.m. That time, it was disclosed to him by the deceased that kerosene was poured on her by the appellant.

Kalpana died in the hospital. A funeral was taken at his village.

Thereafter, the first informant came to Buttibori and made enquiries with the people residing there. That time, it was revealed to him that the appellant made a demand for money which was not fulfilled by the deceased and therefore, she was killed by pouring kerosene and setting her ablaze.

4. We have heard Shri U.R.Phasate, the learned counsel for the appellant and Smt.Geeta Tiwari, learned Additional Public Prosecutor for the State. Both of them took us through in detail the

Record and proceedings of the Sessions case.

According to both the learned counsel, during the period of treatment of deceased Kalpana, her Dying Declarations were recorded by Police Officer and Special Executive Magistrate.

They also submit that prior to her death Kalpana made oral Dying Declarations to prosecution witnesses.

5. The learned counsel for the appellant would submit that there is variance in between the Dying Declarations recorded by authorities and the oral Dying Declarations. Hence, appellant is entitled to be set free by allowing the present appeal.

Per contra, the learned Additional Public Prosecutor supported the impugned judgment and prayed for dismissal of the appeal.

6. The case of the prosecution is based on two written Dying Declarations and oral Dying Declaration made to the prosecution witnesses.

Exh.72 is the Dying Declaration recorded by Police, whereas Exh.73 is the Dying Declaration recorded by the Special Executive Magistrate. These two documents are admitted by defence. Exh.72 shows that deceased Kalpana suffered burn injuries due to accident. Exh.73 shows that before recording the Dying Declaration the Special Executive Magistrate found that the patient is in a condition to give her statement and thereafter he has recorded her Dying Declaration. The said also shows that she suffered burn injuries due to accident and her husband, present appellant, has extinguished the fire.

7. PW 4 Johra Babbu Sheikh, PW 7 Iqbal Shaikh Babbu and PW 8 Sau.Chandrakala Chatap claim that deceased Kalpana made an oral Dying Declaration to them. PW 3 Sudhakar Chatap who is the son of PW 8 Chandrakala Chatap states that in his presence deceased Kalpana disclosed to his mother (PW 8) and Johra Shaikh (PW 4) that the appellant poured kerosene on her person and set her on fire. According to the oral Dying Declaration made to these persons, the appellant is the culprit.

8. The incident is dated 26th of October, 2011. The police statement of PW 4 Johra Sheikh is recorded on 8th of November, 2011. The police statement of PW 7 Iqbal Shaikh is recorded on 8th of November, 2011 and his statement (Exh.41) under Section 164 of the Code of Criminal Procedure was recorded on 21 st of November, 2011, whereas the police statement of Chandrakala Chatap (PW 8) was recorded on 1st of November, 2011 and her statement (Exh.43) under Section 164 of the Code of Criminal Procedure was recorded on 28th of November, 2011 and the statement of Sudhakar Chatap (PW 3), according to him, was recorded after fifteen days. Thus, without there being any explanation from the prosecution, for recording the statement of relevant witnesses belatedly, it is hard to believe their statements.

Further, according to the First Information Report, the first informant after completion of the funeral visited Buttibori and then made inquiries with the people residing there and thereafter he has lodged the report. The report is dated 12th of November, 2011. It is also at belated stage.

9. The Court is therefore having two sets of dying declarations.

One set of written Dying Declarations (Exh.72 and Exh.73) recorded by the Police and the Special Executive Magistrate, respectively, which shows that the unfortunate incident has occurred due to accident, whereas the other set of dying Declaration is oral in nature to the witnesses, whose statements are recorded at belated stage, shows that the appellant is responsible for burns.

10. The approach of the Court should not be "pick and choose". When there are two sets of Dying Declarations and there is variance on material aspect. If one shows that incident caused due to accident and another shows otherwise, and if there is nothing available to show any suspicious circumstance around the Dying Declaration which absolves the accused then in that event benefit must go to the accused. In that view of the matter, according to us, this is not a case wherein this Court should stamp its approval to the judgment and order of conviction. Resultantly, we pass the following order.

-ORDER-

The appeal is allowed.

The judgment and order of conviction passed by the Sessions Judge, Nagpur dated 27th of March, 2014 in Sessions Trial No.328 of 2012, is hereby quashed and set aside. The appellant is acquitted of the offence punishable under Section 302 of the Indian Penal Code.

The appellant be set at liberty forthwith, if not required in any other case.

The amount of fine, if any paid, be refunded to the appellant.

JUDGE

JUDGE

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CERTIFICATE

I certify that this judgment/order

uploaded is true and correct copy of original signed judgment/order.

Uploaded by : P.Z.Chute.

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