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Court : Mumbai Nagpur

Decided On : May-07-2013

Judge : R.C. Chavan & Prasanna B. Varale

Appeal No. : Criminal Appeal No.545 of 2009

Appellant : Vilas

Respondent : State of Maharashtra

Judgement :

Oral Judgment: (P.B. Varale, J.)

By this Appeal, the appellant / original accused is challenging the judgment passed by the learned Additional Sessions Judge, Buldhana, thereby convicting the accused / appellant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer life imprisonment and to pay fine of Rs.2,000/- (Rupees Two Thousand only), in default of which to undergo further rigorous imprisonment for four months.

2. Facts as are necessary for the decision of this appeal may briefly be stated thus :

The marriage of the victim Sarla and the appellant / accused had solemnized sometime in 2004 and the couple was blessed with one child namely Vishal. Though in the initial period of marital life of couple everything was well,

subsequently after 5-7 months of the marriage, the accused and his parents were picking up quarrels with Sarla on trifle grounds and consequently the couple was separated from each other. Thereafter, victim Sarla and her son started residing with her parents and she lodged a report in Police Station against the appellant / accused. Because of amicable settlement between victim Sarla and appellant / accused, Sarla again started residing with appellant / accused. On the fateful day i.e. on 8th July, 2008, Sarla had been to Dr. Borale for her medical examination. Dr. Borale told her that she is carrying pregnancy of two months. On her return from Dr. Borale, she informed the appellant / accused about her pregnancy and demanded Rs.500/- for curetting. The appellant / accused started abusing her and stated that she is not carrying his pregnancy, the foetus is not of him and she should go to her parents' house. The victim's father in-law and mother in-law also abused Sarla and instigated the appellant Vilas by saying that instead of keeping such wife, he should set her on fire. Due to quarrel, Sarla felt uneasy and lied down. After sometime her mother in-law (accused No.3) said that Sarla is pretending and she should be set ablaze. In the meantime, aunt of the appellant namely Gumphabai reached to the house of the couple and tried to pacify but no heed was paid to her request. The original accused Nos.2 and 4 caught hold Sarla and the appellant by pouring kerosene on her person set her on fire by lighting match stick. On hearing hue and cry of victim Sarla, the members available on the spot namely one Anjanabai and others poured water on person of Sarla and put quilt on her person.

The aunt of appellant namely Gumphabai and others immediately admitted her in a private Hospital viz. Shilpa Nursing and Maternity Home, Malkapur (hereinafter referred to as "Hospital"). As soon as Sarla was admitted in a hospital, the information was forwarded to the police authorities. On receiving the information, Shri. Dilip Pote, Police Sub-Inspector of Police Station, Malkapur, took the cognizance of offence and registered the case against the accused persons under Sections 498-A and 307 read with 34 of the Indian Penal Code. Shri. Pote himself carried out the investigation and recorded spot panchanama vide Exh. 56 and seized articles from the place of incident. In the meantime, a request was forwarded to the Executive Magistrate, Malkapur to record the dying-declaration and accordingly the Executive Magistrate recorded the dying-declaration. Sarla

had succumbed to the injuries on 10th July, 2008 and accordingly the offence was registered under Section 302 of the Indian Penal Code. After collecting the necessary material and on completion of investigation, the charge-sheet was filed in the Court of Judicial Magistrate First Class, Malkapur. The offence being exclusively tribal by the Court of Sessions, the case was committed to the Sessions Court, Buldhana.

The accused pleaded not guilty to the charge. The defence of the accused is of accidental death of Sarla and denial of any complicity in the commission of offence. On appreciation of the evidence, the learned Sessions Judge acquitted the other accused persons namely accused Nos.1, 3 and 4 for the offences punishable under Section 498-A read with 34 of the Indian Penal Code and also acquitted accused Nos.3 and 4 Smt. Bebabai and Smt. Dwarkabai for the offence punishable under Section 302 read with 34 of the Indian Penal Code whereas convicted the accused No.1 (appellant) for the offence punishable under Section 302 of the Indian Penal Code. Being aggrieved by the judgment and order passed by the learned Sessions Judge, the appellant is before us in the present Appeal. In order to prove the guilt of the accused, the prosecution has examined in all seven witnesses. The prosecution mainly relies on the dying declarations in support of its case. During the pendency of the trial, it seems that the accused No.2 was reported to be dead.

3. Shri. Agrawal along with Shri. P. B. Patil, the learned Counsel for the appellant vehemently submitted that the conviction recorded by the learned Additional Sessions Judge against the appellant is solely on the basis of dying declarations. He further submitted that these dying-declarations are not free from doubt and it is completely unsafe to rely on these dying-declarations and record conviction on such a weak piece of evidence. The learned Advocate for the appellant further submitted that there is no explanation by the prosecution on the aspect that in spite of material witnesses being available with the prosecution, those witnesses have not been examined by the prosecution. The learned Advocate for the appellant further submitted that if the testimony of the witnesses examined by the prosecution is carefully considered, these witnesses support the case of the appellant that the death of the victim Sarla is an accidental death.

4. Ms M.H. Deshmukh, the learned Additional Public Prosecutor for the respondents, supports the judgment passed by the learned Additional Sessions Judge, Buldhana.

5. With the assistance of both the learned Counsel appearing on behalf of the respective parties, we have gone through the evidence placed on record. As the prosecution mainly relies on the dying-declarations, it will be useful to refer to these dying-declarations. The perusal of the Exh. 71 shows that, Sarla, in respect of the incident dated 8th July, 2008, stated that on 8th July, 2008, Sarla visited Dr. Borale of Malkapur. Dr. Borale informed her that she is carrying two-months pregnancy. At about 3.00 pm when her husband returned home, she informed him about her pregnancy and requested the appellant for Rs.500/- for curetting. She further stated that on demand, the appellant started abusing her and denied the paternity of the foetus. Her mother in-law and father in-law, who are residing nearby also started abusing her and stated that instead of maintaining such wife, she should be set on fire. Sarla requested that she may be allowed to go to her parental home with her son. Her mother in-law instigated the appellant by abusing her. As Sarla felt giddiness, her mother in-law stated that she is pretending and she should be set on fire. At that time, aunt of the appellant namely Gumphabai reached there and stated that Sarla is not keeping well and as such they should not indulge in quarrel. The mother in-law, father-in-law and grand mother of the appellant caught hold Sarla and the appellant poured kerosene on her person and set her ablaze. On hearing hue and cry of Sarla, the matrimonial relatives and one Anjanabai poured water on her person and extinguished the fire and put a quilt on her person. One Pandit Bilawar, uncle of the appellant, Smt. Gumphabai, aunt of the appellant and some other residents admitted Sarla in a private hospital. In the first dying-declaration, victim Sarla alleges that she was set on fire by her husband i.e. appellant and the other accused caught her hold.

6. The second dying-declaration is at Exh. 69, which is recorded by Executive Magistrate - M.N. Shekokar. P.W. 5 - M. N. Shekokar, in his testimony, deposed that on receiving the requisition / request letter from the Police Station, Malkapur, for recoding the dying-declaration of one patient namely Sarla in the hospital of Dr. Kabra, he immediately rushed to the Hospital of Dr. Kabra and ascertained about

the mental and physical fitness of Sarla. He recorded the dying-declaration of Sarla. Sarla told Mr. Shekokar (P.W.5) that at about 7.00 pm, the appellant poured kerosene on her person and set her on fire by lighting matchstick. P.W. 5 deposed that Sarla stated before him that her in-laws were present in the house and they extinguished the fire. After recording the dying-declarations, P.W. 5 - M. N. Shekokar requested Dr. Kabra to issue fitness certificate and accordingly on examination Dr. Kabra issued requisite certificate (Exh. 64). On analytical perusal of these two dying-declarations it reveals that though the version of victim Sarla in respect of setting her on fire by appellant is consistent, in these two dying-declarations there is variance in respect of the role played by the other accused.

7. Now, we shall deal with the other witnesses. P.W. 1 -Harsing Ramsingh Solanke deposed that, on hearing hue and cry, he immediately rushed to the place of incident. He further deposed that in the hearth there were partly burnt fire woods. He further deposed that, while extinguishing the fire, victim Sarla was talking with him and others and also told Harsingh that while igniting hearth she poured kerosene on the fire wood and her saree caught fire. This statement of Sarla can be termed as the oral dying-declaration to P.W. 1 - Harsing. In this disclosure, Sarla states that it was an accidental fire.

8. P.W. 2 is Shenfadu Sitaram Beldar, who is the father of the victim Sarla. Interestingly, this witness in his cross-examination by learned APP, clearly states that his daughter victim Sarla had told him that while cooking on hearth, her saree caught fire. He further stated that on seeing burnt condition of Sarla, he got annoyed. He further stated that on account of his annoyance against accused persons, he himself told Sarla to give statement against accused persons before Police as well as Executive Magistrate. He further admits that at the time of recording statement of Sarla, he was present with her.

9. P.W. 4 is the Dr. Gunwant Ramkrushna Bhole, Medical Officer, who has conducted autopsy on victim Sarla. P.W. 4 - Dr. Gunwant deposed that on examination of the dead body of Sarla, he noticed the following injuries.

i) There was no injury on head, neck and face.

- ii) Abdomen and chest were having 11% superficial to deep burns.
- iii) On back burns were to the extent of 5%.
- iv) Right upper limbs was having 5% superficial to deep burns.
- v) Left upper limbs was having 7% superficial to deep burns.
- vi) Right lower limbs and left lower limbs were having 16% each superficial to deep burns.

Percentage of total burns were 60%. P.W. 4 further stated that according to him, the cause of death was 'shock due to 60% burns'. In the cross-examination, a suggestion was given to this witness (P.W. 4) that the fire might have started from the lower side of deceased and P.W. 4 stated that he agreed with the suggestion.

10. P.W. 6 is the Investigating Officer, who gives us the details of the investigation.

11. On appreciation of the evidence, we find that the testimony of P.W. 1 and 2 i.e. Harsing and Shenfadu is in a sharp contrast to the dying-declarations of victim Sarla. It is not in dispute that P.W. 1 - Harsing is the next door neighbour of the appellant. Harsing - P.W. 1, on hearing hue and cry, immediately rushed to the place of the incident and the story put forth by the victim in respect of receiving burns is of accidental burns. It is interesting to note that in her disclosure to this witness, Sarla has not alleged anything against the appellant or any other accused persons. On an analytical appreciation of the dying declarations viz. Exh. 71 and 69 with the version of P.W. 1 and 2, we are of the opinion that it is difficult to rely on either Exhs. 71 or 69. The defence successfully brought on record that these dying-declarations are the outcome of a designed attempt to implicate the accused at the instance of P.W. 2 i.e. the father of the victim Sarla.

12. Ms M.H. Deshmukh, the learned Additional Public Prosecutor for respondent submitted that the dying-declarations can be basis for conviction and they need no corroboration. There cannot be any dispute on the proposition of law that the dying::: declarations can be basis for conviction and there is no need of corroboration but the dying-declarations must be free from any doubt and it must

be inspiring the confidence.

13. In the present matter, as it is observed by us that the dying-declarations are not free from doubt and as such it will be unsafe to rely on such dying-declarations. On considering the medical evidence, we find that the burns received by victim Sarla largely affected the lower limbs whereas there was no injury to her head and neck. We find considerable merit in the submissions of the learned Counsel for the appellant that, if the victim was set on fire by pouring kerosene on her person, then the affected portion would have been the upper portion of the body whereas the actual affected portion is the lower portion of the person of deceased. Coupled with the testimony of the P.W. 4, who admits that the fire might have started from lower side of deceased, the learned Counsel for the appellant submitted that considering the testimony of the P.W. 4, the possibility of victim receiving accidental burns in the process of igniting the hearth and accidentally catching fire to her saree cannot at all be ruled out.

14. Taking over all view of the evidence, we are of the opinion that the prosecution has miserably failed to prove that the death of the victim Sarla is a homicidal death and the appellant is the author of the crime. As we find that the prosecution has failed to bring home the guilt of the appellant / accused, with the sufficient evidence and with the possibility of accidental death of the victim Sarla, the appellant made out a case for extending the benefit of doubt to the appellant / accused. In the result, Criminal Appeal is allowed and the conviction and sentence of the appellant is hereby quashed and set aside and the appellant is acquitted of the offence for which he was convicted.

Fine, if paid by the appellant, be refunded to him. Since the appellant is in jail, he be released forthwith if not required in any other crime.

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