

Annasaheb and Others Vs. the State of Maharashtra

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Court : Mumbai Aurangabad

Decided On : Feb-25-2013

Judge : A.H. Joshi & Sunil P. Deshmukh

Appeal No. : Criminal Appeal No. 610 of 2012

Appellant : Annasaheb and Others

Respondent : The State of Maharashtra

Judgement :

Oral Judgment: (A.H. Joshi, J.)

1] Appellants herein have been convicted u/s 302 and 498-A r/w 34 of the Indian Penal Code by the Additional Sessions Judge, Ahmednagar, vide judgment and order dated 11.10.2012. They are convicted and sentenced u/s 302 r/w 34 of the Indian Penal Code to suffer rigorous imprisonment for life and to pay fine of Rs.1,000/each, in default of payment of fine, to suffer rigorous imprisonment for one month. They are further convicted and sentenced u/s 498-A r/w 34 of the Indian Penal Code to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- each, in default of payment of fine, to suffer simple imprisonment for one month.

2] The case of prosecution is that the appellants along with Raosaheb Rangnath Dod, who is acquitted by the Sessions Judge of all charges, either individually or in furtherance of common intention subjected deceased Madhuri Annasaheb

Dhokane, to cruelty and harassment for demanding remaining dowry amount of Rs.20,000/- and caused death of Madhuri by pouring kerosene on her person and setting her on fire.

3] The case is based on dying declaration in absence of direct evidence whatsoever. Copy of dying declaration Exhibit 23 is at page 127 of paper book.

4] Exhibit 23 the dying declaration is proved by PW 9 Arvind Mahadeo Mahajan, Police Head Constable Bakkal No. 319. The state of fitness of victim Madhuri was examined by PW 8 Dr.Amar Madhukar Deshmukh (Exh.37), Medical Officer, PMT Hospital, Loni Tq.Rahata.

5] The relevant text, from the dying declaration recorded by PW 9, PHC Arvind Mahajan, which is relied upon to be the dying declaration indicting all accused, which is quoted in vernacular as follows:-

HINDI

(Quoted from Exhibit 23 page no.128 of paper book)

6] The dying declaration, as regards cause of death of Madhuri Annasaheb Dhokane and the charge of cruelty etc. was sought to be proved from the testimonies of PW 3 Raosaheb (uncle of deceased), PW 4 Balasaheb (brother-in-law of PW 5 Sunil) and PW 5 Sunil (father of deceased).

7] Relying on the evidence, as was tendered, the learned Sessions Judge has recorded finding of conviction and sentence as stated above.

8] Heard learned Advocate for the appellants, learned APP for the State and Advocate Shri R.V. Gore for the complainant.

9] The arguments advanced in support of the appeal can be summarized as below:-

[a] The case being based on circumstantial evidence, the evidence ought to be strong and above suspicion of whatever nature.

[b] The dying declaration is untrustworthy, the reason thereto being that the state of fitness of Madhuri for making dying declaration is not proved objectively, based on reasons leading to opinion of fit status of Madhuri to make the dying declaration.

[c] Bare statement that Medical Officer PW 8 Dr.Amar Deshmukh has examined her and she was found fit does not prove the state of fitness. The fitness was required to be ascertained by proving the orientation and the doctor has failed to make any statement whatsoever in that regard. Opinion of PW 8 is thus mere opinion without proof of facts leading to emergence of said opinion.

[d] PW 9 Arvind Mahajan who has recorded dying declaration also does not prove as to how he has made efforts to ascertain the fitness of Madhuri to give dying declaration.

[e] PW 9 Arvind Mahajan has accepted in cross examination that the statement of Madhuri was also recorded by Circle Inspector. The said statement if so recorded has not come before the Court.

[f] More over, oral dying declarations given to PWs.3, 4 and 5 come under grave cloud and doubt due to scanty narration. The scantness of statement suggests that it is deficient, leads to a doubt about her state of fitness to make a statement and alternatively that these witnesses are not truthful.

[g] The Circle Inspector who is said to have recorded the statement is not examined as the statement the way in which it is on record if accepted to be true, does not prove the involvement of the appellants.

[h] Evidence relating to ill-treatment in the shape of testimony of witnesses namely PW 3 Raosaheb, PW 4 Balasaheb and PW 5 Sunil, is all hearsay.

10] Learned Advocate for the appellants has placed reliance on following judgments in support of his submissions:-

1] Gulshanbi Ayubsha V/s State of Maharashtra. - 2011(1) Bom.C.R. (Cri.) 693.

[2] Surinder Kumar V/s State of Haryana - (2011) 10 SCC 173.

[3] Manohar Dadarao Landge V/s State of Maharashtra - 1999 (Supp.) Bom.C.R., 215.

[4] State of Maharashtra V/s Manohar Mukindrao Tayade. - 2005 ALL MR (Cri) 469.

[5] Praveenkumar Gulabrao Chandekar V/s State - 2002 Bom.C.R.(Cri.), 795.

[6] Rama Rajdhar Koli V/s State of Maharashtra - 2002 ALL MR (Cri), 136.

[7] Samadhan Mahadu Badgujar V/s State of Maharashtra - 2002 (Cri.Supp.) Bom.C.R., 85.

[8] State of Maharashtra V/s Manohar Rambhau Dahibhajan - 2005 ALL MR (Cri) 849.

[9] Hanumant Karbhari Karale V/s State of Maharashtra - 2006 (1) Bom.C.R. (Cri), 458.

[10] Manik Vanaji Gawali V/s The State of Maharashtra - Criminal Appeal No.292/2006 decided on 21.12.2012 (Aurangabad Bench).

11] The learned Advocate Shri R.V. Gore for the complainant has advanced submissions placing strong reliance on the evidence as it is brought on record and urged that:-

[a] The dying declaration recorded by PW 9 Arvind Mahajan is fortified and supported by the oral dying declarations received by PW 3 Raosaheb, PW 4 Balasaheb and PW 5 Sunil.

[b] The defence has failed to suggest anything due to which evidence of these witnesses should be disregarded.

12] Learned Advocate Shri R.V. Gore for the complainant has placed reliance on following judgments in support of his contentions:-

[1] Laxman V/s State of Maharashtra - 2002 DGLS (Soft.) 712.

[2] Sukanti Moharana V/s State of Orissa - 2009 DGLS (Soft.) 965.

[3] State of Rajasthan V/s Champa Lal. - 2009 DGLS (Soft.) 440.

[4] Shiva Chandram Loni V/s State of Maharashtra. - 2012 (1) Bom.C.R. (Cri), 158.

[5] Baburao @ Babulal Raibhan Patole (Jadhav) V/s Government of Maharashtra - 2011(4) Bom.C.R. (Cri.), 239.

[6] Koli Chunilal Savji V/s State of Gujarat - 1999 DGLS (Soft.), 1250.

13] Learned APP has supported the conviction more or less on the same grounds urged by the complainant.

14] Discussion about evidence:-

The testimonies of PW 3 Raosaheb, PW 4 Balasaheb and PW 5 Sunil are broadly coherent. These witnesses have given the brief background of ill-treatment over dowry related demand.

15] Specific instances of ill-treatment are not deposed by these witnesses.

16] All that PW 3 Raosaheb has stated about version of Madhuri as regards cause of death and circumstances, reads ad-verbatim as below:-

"On inquiry she informed that all accused persons poured kerosene on her and set her on fire. Thereafter she was shifted to Pravara Medical Hospital.

(Quoted from testimony of PW 3, Exhibit 26, page no.139 of paper book)

As noted earlier, the version of PW 4 Balasaheb and PW 5 Sunil as regards ill-treatment as well as the circumstances in which Madhuri was set to fire is as seen at page nos.150 and 156 of paper book. The testimony of PW 4 Balasaheb is to the following effect:-

"I and her uncle shifted her from Nursing Home to Loni Pravara Hospital. There treatment was taken for 4 to 5 days. On 28.01.2011, she succumbed to the burn injuries while taking treatment. On 24.01.2011 Police recorded my statement and

thereafter also recorded supplementary statement regarding the said incident."

(Quoted from testimony of PW 4, Exhibit 27, page no.150 of paper book)

As far as PW 5 Sunil is concerned, he states as under:-

"Madhuri told that as remaining dowry was not paid, she was burnt. Accused are present in the Court hall."

(Quoted from testimony of PW 5, Exhibit 29, page no.156 of paper book)

17] Version of PW 9 Arvind Mahajan as regards dying declaration, who is the author of the dying declaration, Exhibit 23 is already drawn from the text of page no.127 as quoted in verbatim earlier. This witness barely states that he recorded it.

18] As regards the certification of fit state of Madhuri, by Medical Officer, PW 9 Arvind Mahajan states as follows:-

"Dr.Deshmukh was present there, he examined the patient and gave endorsement. Then, I recorded statement of patient Madhuri Annasaheb Dhokane as per her say. After recording her statement, again, doctor examined her and gave endorsement.

After statement, patient put her thumb mark."

(Quoted from testimony of PW 9, Exhibit 139, page no.185 of paper book)

19] Insofar as fitness of the deceased Madhuri to make a statement, PW 8 Dr.Amar Deshmukh has stated as follows:-

"On 23.1.2011, Police recorded statement of Madhuri. Prior to that, I examined her and gave endorsement that she is in a position to give statement. The endorsement now shown to me on Exh.23 bears my signature. After recording her statement, again I examined her and found that she was conscious while giving statement. I again gave endorsement accordingly."

(Quoted from testimony of PW 8, Exhibit 37, page no.178 of paper book)

20] In the cross-examination, PW 8 Dr.Amar Deshmukh accepts that it was necessary to mention about the orientation of the patient.

21] Insofar as oral dying declarations are concerned, the text is too scanty to constitute facts naming involvement and role of each and every accused insofar as cause of death is concerned.

22] Insofar as aspect of ill-treatment is concerned, what PW 3 Raosaheb, PW 4 Balasaheb and PW 5 Sunil can be said to have proved is that these versions suggest and prove that the deceased Madhuri had disclosed to these witnesses that dowry related demands were made by the accused. However, the nature, extent and description of the ill-treatment and that the ill-treatment was of such nature that thereby Madhuri would be driven to commit suicide or inflict on herself grave bodily injury likely to result in her death etc. is not suggested, much less proved.

23] Insofar as charge u/s 302 of the Indian Penal Code is concerned, it solely rests upon the testimony of Medical Officer and the Police Head Constable who have participated in the process of recording the dying declaration.

24] The worthiness of dying declaration will depend upon proof of state of fitness of Madhuri to give dying declaration. This Court has decided in the judgment rendered in Criminal Appeal No.292/2006 (cited supra) that the fitness of the declarant is to be proved objectively. The said proof is to be done by way of a personal judgment of the person stating the said opinion.

25] The said judgment of fitness is an opinion has to be based on rationale on the basis of which it is formed. The foundation of such rationale is the set of questions, on which the opinion is propelled and is formed. Said questions, their answers coupled with observation of declarant simultaneously done, helps the Medical Officer or any other person in forming an opinion as to whether the person making the declaration was well oriented as to place time, background and events.

26] In the present case, if the testimony of PW 8 Dr.Amar Deshmukh and testimony of PW 9 Arvind Mahajan is accepted on its face to be worthy of fullest

worth value and whatever can be accorded thereto, any questions, answers, facts observed about the state of fitness of Madhuri are not falling or emerging in manner and extent whatsoever, the objectivity underlying the decision making process has to emerge and be available for gauging worthiness thereof by the Court. On facts, it is seen that the worthy status of Madhuri to make a dying declaration is not proved by any objective material.

27] In the result, the prosecution case which is solely based on dying declaration may not stand in the eye of law. If the dying declaration of such a weak and fragile form is to be relied upon, it will mean convicting the accused on suspicion than on evidence.

28] Other points which were raised in objecting the dying declaration that the Circle Inspector who is said to have recorded the statement is not examined, need not be dealt with at this stage. Since even otherwise, the statement as the way in which it is on record if accepted to be true, it does not prove the involvement of the accused.

29] In view that the case is capable of decision on sole point as regards fit status of Madhuri, we stop discussion on other points and other precedents cited at Bar by respective parties.

30] In the result, the appeal succeeds. The judgment and order of conviction vide order dated 11.10.2012 passed by Additional Sessions Judge, Ahmednagar in Sessions Case No.131/2012 against the appellants is hereby quashed and set aside. The appellants are set at liberty. Fine amount, if any, paid by the appellants be refunded to them. Bail bonds, if any, furnished by the appellants, stand cancelled.

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