

Venkatesh Vs. The State of Maharashtra

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Court : Mumbai Aurangabad

Decided On : Dec-10-2014

Judge : S.S. Shinde & a.I.S. Cheema

Appeal No. : Criminal Appeal No. 79 of 2012

Appellant : Venkatesh

Respondent : The State of Maharashtra

Judgement :

S.S. Shinde, J.

1. This appeal is filed by the appellant, aggrieved by the judgment and order passed by the Additional Sessions Judge, Osmanabad on 27th January, 2012, thereby convicting the appellant for the offence punishable under section 302 of Indian Penal Code and sentencing to suffer imprisonment for life and to pay fine of Rs. 500/-, in default, to suffer further S.I. for one month.

2. The case of the prosecution, in brief, is as under:

(i) On 01.02.2011 P.W. 2 Hanumant Ramrao Kolangade Police Head Constable was on duty in Police Chowki located in Civil Hospital, Osmanabad. P.W. 1 Dr. Sushilkumar Shivajirao Sarade was a duty Medical Officer present in the hospital on 01.02.2011. At about 12.20 p.m. Radha Venkatesh Kaulge was admitted in

Civil Hospital, Osmanabad in burn condition. P.W.1 Dr. Sarda after examining her, informed the duty Police constable P.W.2 Hanumant Kolangade. P.W.2 Hanumant Kolangade came to the hospital for recording the statement of Radha. P.W. 1 Dr. Sarade examined Radha where she was conscious and fit state of mind to give the statement. P.W. 1 Dr. Sarade found Radha in conscious and fit to give statement, therefore, P.W. 2 Hanumant Kolangade recorded her statement. In the statement Radha Kaulge has stated that her husband picked quarrel with her under the influence of liquor and poured kerosene on her person and set her ablaze.

(ii) P.W. 2 Head Constable Kolangade submitted the statement of Radha recorded by him to City Police Station, Osmanabad. P.W. 10 Yeshwant Sagar who was on duty registered the offence vide Cr. No. 36/2011 u/Sec. 307 of Indian Penal Code on the strength of statement (dying declaration Exh. 20). He then entrusted the investigation to P.W. 12 API Munshi Malang Shaha Madar.

(iii) P.W. 12 Munshi Madar went to Civil Hospital, Osmanabad and he also recorded statement of Radha Kaulge Exh. 47. He then wrote a letter to the Executive Magistrate P.W. 3 Dilip Yeshwantrao Deshpande Exh. 24. P.W. 3 Deshpande also ascertained from P.W. 4 Dr. Kailas Gilbile, Medical Officer in Civil Hospital, as to whether Radha was conscious and in fit state of health to give statement. P.W. 3 Dilip Deshpande then recorded the statement of Radha Exh. 26.

(iv) P.W. 12 Investigating Officer Madar then visited the spot of incident and prepared the spot panchanama Exh. 41. He also seized the Kerosene Can, half burnt curtain, plastic flowers, red-colour Saree, match box from the room. It appears that, Radha Kaulge jumped in the water tank which is at a distance of 15 ft. from the spot of incident to extinguish the flames. P.W. 12 Madar also collected water sample from the water tank, as he noticed a layer of kerosene on the water.

(v) The accused also sustained burn injuries and he was admitted in burn ward. The investigating officer also seized the yellow T shirt from the accused which was also burn, under the panchanama Exh. 37. He also seized the blouse of Radha Kaulge under seizure panchanama Exh. 36. After seizing the articles, P.W. 12

then sent the articles to C.A. Aurangabad.

(vi) Tahsildar Shri. Dilip Deshpande also drawn the map of incident Exh. 27. The investigating officer also recorded the statement of witnesses. As Radha succumbed to her burn injuries on 15.02.2011, Section 302 was added in the crime. The inquest panchanama Exh. 22 was drawn. P.W. 4 Dr. Gilbale also performed postmortem of Radha Exh. 32. P.W. 12 Madar also recorded supplementary statement of the witnesses and arrested the accused on 21.02.2011. After completion of investigation the present prosecution came to be launched against the accused. After arrest, the accused is in jail and as the offence under section 302 of I.P.C. is exclusively triable by court of Sessions, the learned Chief Judicial Magistrate on 24.06.2011 committed the case to the Court of Sessions.

(vii) The charge u/sec. 302 of I.P. Code is framed against the accused at Exh.6. The contents in the charge were read over to accused in Marathi. The accused pleaded not guilty and claimed to be tried.

(viii) The defence of the accused, as revealed from the tenor of the cross examination of the witnesses and from his statement recorded under section 313 of Cr.P.C., appears to be that of total denial. The accused stated in the statement under section 313 of Cr.P.Code that, his wife Radha was preparing tea and there was explosion of stove and in that Radha sustained burn injuries. So, according to accused, Radha sustained accidental burn injuries.

3. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor for the respondent/State. With their able assistance, we have perused the record and also other material placed on record.

4. The learned counsel appearing for the appellant submits that, there are three dying declarations recorded of the victim and the version stated in the said three dying declaration is not consistent. He further submits that, the contents of the said three dying declarations have not been corroborated by any sufficient evidence on record. He also submits that, the prosecution has failed to prove the guilt of the appellant-accused beyond reasonable doubt. Therefore, by referring to the

contentions/grounds raised in the Appeal memo, he prays to acquit the appellant.

5. On the other hand, the learned Additional Public Prosecutor relying upon the reasons given in the impugned judgment and order passed by the trial Court and also the original record and proceedings submits that, the conviction has been awarded by the Trial Court after considering the evidence brought on record by the prosecution. Therefore, he submits that, the appeal of the appellant may be dismissed.

6. This appeal raises following broad questions for consideration/determination on facts as well as law:

(i) Whether the death of Radha was homicidal or accidental as claimed by the defence?

(ii) Whether Dying Declarations of the victim inspires confidence so as to base the conviction on it?

(iii) Whether there is sufficient corroboration to the Dying Declarations given by the victim?

(iv) Whether there are any mitigating circumstances, so as to accept the alternate submission of the counsel for the appellant that, case would fall under section 304 Part-II and not under section 302 of I.P. Code?

7. The death of Radha as per opinion expressed in P.M. Report was shock due to superficial to deep burns 88%. Dr. Sushilkumar Shivajirao Sarode, who was working as Medical Officer, Civil Hospital, Osmanabad at the relevant time, in his evidence before the Court, when suggestion was given to him that, death was accidental, has denied the said suggestion and stated that, when statement of Radha was recorded by the head constable Kolangade prior to it he examined her and found that, she was conscious, oriented and in a fit mental condition to give statement and accordingly he put endorsement on dying declaration that, the patient is conscious and well oriented to give the statement. He further deposed that, the head constable Kolangade recorded her statement in his presence. The recording was done in question and answer form by police head constable

Kolangade. Victim narrated the incident. He was present throughout recording of the statement. She stated that, at about 12 noon she was present in the house. She further stated that, as usual her husband Venkatesh came in the house under influence of liquor and then picked up quarrel with her and said that, he will set her on fire. She further stated that, husband poured kerosene on her body and set her on fire and she sustained burn injuries on her stomach, leg, face, back and hands. She further stated that, she has complaint against her husband. The head constable Kolangade again requested this witness to medically examine Radha, and he examined Radha and found that, Radha was in conscious, well oriented with time, place and person. Again he certified about her fitness about 1.10 p.m. He also signed below the endorsement. The contents of the Dying Declaration are correct. The said contents of Dying Declaration were read over to Radha by the head constable Kolangade and she admitted that, the contents are true and correct. He has denied the suggestion that, morphine injections were administered to victim. He has further denied the suggestion that, Radha was not in conscious state of health and not in a position to give statement. He has further denied the suggestion that, the burn injuries sustained by Radha are accidental injuries. Therefore, if the postmortem report coupled with the evidence of Medical Officer is read in its entirety, the prosecution has established beyond reasonable doubt that, the death of Radha was homicidal and not accidental as claimed by the defence.

8. It appears that, there are three Dying Declarations of victim coupled with one oral Dying Declaration to her father. One Dying Declaration was recorded by the Police head Constable Kolangade. Upon perusal of the contents of the said Dying Declaration, it is stated by the victim that, as usual husband came after consuming liquor and poured kerosene on her person and set her on fire. It is further stated in the Dying Declaration that, on 1st February, 2011 when she was in the house at about 12 noon, the husband came under influence of liquor and started abusing her and said that, he will set her on fire and accordingly poured kerosene on her person and she was set on fire. She sustained the injuries on her stomach, leg, face, back and hands, and therefore, she has complaint against her husband. It is further stated that, the contents of the said Dying Declaration are read over to her and those are correct as per her narration. Upon perusal of Dying Declaration at

Exhibit 53, it is abundantly clear that, there is an endorsement of doctor and also the police head constable. The necessary requirement has been fulfilled, therefore, the said Dying Declaration is perfectly sustainable in law. The said Police constable Kolangade is also examined as PW-2.

He has stated in his examination-in-chief that, he did ask the name of victim, also her age, her residence and after satisfying himself that, the victim is in conscious state of mind and fit mental condition recorded her Dying Declaration. He further deposed that, he asked victim as to the cause of her burning, in reply, she stated that, her husband used to quarrel with her and today also there was quarrel and in that, her husband poured kerosene on her and set her on fire. She also told that, her husband was under the influence of alcohol. When he asked, how she extinguished the fire then she replied that, she jumped in a water tank and extinguished the fire.

She further told that, her relatives brought her in a hospital and admitted her. In cross-examination of this witness, he further deposed that, the statement was read over to Radha and the contents thereof are true and correct and per her narration. It appears that, the defence gave many suggestions to this witness, however, he denied the suggestions given by the defence. He has also stated that, he drew inquest panchanama. He further deposed in cross examination that Radha sustained burn injuries on her entire body. He has specifically denied the suggestion that, Radha was in drowsy condition while recording the statement. He has further denied the suggestion that, as Radha was not in a state of health to give statement and her father was giving tips at the time of recording the statement. He further deposed that, while recording the dying declaration the Medical Officer was very much present and he put his endorsement at the beginning of recording the Dying Declaration and also after recording the Dying Declaration. Therefore, upon perusal of the evidence of PW-1 and PW-2, the prosecution has proved beyond reasonable doubt the contents of the Dying Declaration at Exhibit 53.

9. There is another Dying Declaration recorded by the Executive Magistrate at about 20.10 p.m. on 1st February, 2011 i.e. the date of incident. It appears that,

after completing all the formalities, the Executive Magistrate, Osmanabad has recorded her statement in question-answer form. It appears that, while replying question no.11 regarding her trouble the victim stated that, the husband under influence of liquor used to quarrel with her. While replying the question no.12 as to how she got burnt she stated that, the husband poured kerosene on her person and set her ablaze and she sustained injuries on her whole body. In order to save herself, she jumped in water tank, which was in courtyard of the house as it is reflected. If this Dying Declaration is perused careful, so far act attributed to the accused is same like in Dying Declaration recorded by the Police Constable Kolangade. It further appears that, on all over body she sustained injuries and in order to save herself she jumped in water tank, which is in courtyard of the house. It appears that, on this Dying Declaration there is endorsement of doctor Kailas C. Gilbale. Upon careful perusal of his examination-in-chief, he stated that, he examined Radha and found that, she is in fit mental condition and also conscious and well oriented to give the Dying Declaration. The Naib Tahsildar, Deshpande recorded the Dying Declaration in his presence after ascertaining that, she is in fit condition to give Dying Declaration. He has further examined Radha as to whether she was conscious after recording the statement and he found that, Radha was conscious state of health even after recording of Dying Declaration was over. This witness has specifically denied the suggestion that, the burn injuries sustained by the victim are possible in case of explosion of stove and catching the Sari by fire in that. He has specifically stated that, it is not correct to say that, the burn injuries sustained by Radha are possible in accidental burn incident. He has further stated that, Radha sustained burn injuries on her lungs, chest and abdomen. There were burn injuries to the extent of 14% on the chest and abdomen. Lungs, abdomen and chest are the vital parts of the body. He has denied the suggestion of accidental burn repeatedly on more than one occasion.

10. Naib Tahsildar Dilip Yeshwantrao Deshpande was examined as PW3. We have carefully perused his evidence. He has stated in his evidence that, he asked Radha about her age, her children, in-laws so as to ascertain that, the victim was in fit mental state of mind to give her statement and he then started recording of Dying Declaration at about 8.10 p.m. He asked Radha in question and answer forms in Dying Declaration. He asked Radha about the incident. Radha told him

that, at about 11.00 to 12.00 a.m. her husband came under intoxication at home and he started raising quarrel with her. He started throwing utensils from the house. When Radha interrupted her husband at that time her husband poured kerosene on her person and set Radha on fire. This witness made endorsement that, the Dying Declaration was recorded in presence of Dr. Gilbile. The said Dying Declaration was read over to Radha and she has stated that, the contents of the said Dying Declaration are correct as per her narration. The defence has given few suggestions, however, from the answers given in cross-examination, nothing helpful to the defence has been brought on record during cross-examination. Therefore, the prosecution has proved the contents of the Dying Declaration Exhibit 26 through P.W.3 and PW-4.

11. There is also a statement recorded of Radha at Exhibit 47 on 1st February, 2011 by the Police Sub-Inspector, Police Station, Osmanabad. More or less the contents of the statement are same like earlier two Dying Declarations so far attributing the overt act to the accused. This statement is not in question answer form but it appears that, the statement of the victim is recorded wherein she stated that, on 1st February, 2011 at about 10 a.m. the husband Venkatesh came under influence of liquor and started throwing household articles. Both the daughters namely Vaishnavi and Vaibhavi went to the school. At about 12 noon, the husband again came under influence of liquor when the victim was washing the clothes. He dragged the victim in the house and poured kerosene from Can. When victim tried to rescue herself by running from one room to another, the husband ignited matchstick and set her on fire. She sustained injuries on her body. One Mr. Sagar Malhari Irkar, who is son of sister-in-law came out of bathroom. She ran towards water tank. Then said Sagar came with Rickshaw and took her to hospital. She sustained injuries all over body. Her blouse and Petticoat were burnt and therefore, she has complaint against her husband.

12. PW-12 Munshi Malangshaha Madar in his evidence before the Court stated that, the husband of victim came under the influence of liquor at that time, Radha was washing the clothes. Radha told him that, accused then dragged her in the house and poured kerosene on her person from the kerosene Can. She tried to escape by running in another room, at that time accused lighted the matchstick

and thrown the stick on her body and set her on fire. PW-12 in his evidence has stated that, he identified the said statement and also the thumb impression of the victim. He further deposed that, the accused also sustained burn injuries to his hands, legs and face and chest. This witness also seized 'T' shirt of the accused in presence of two panchas, which was also burnt. This witness identified the panchanama Exhibit 37 and the signature on it. He admitted that, the contents of said panchanama are correct. This witness also seized the blouse of victim from the hospital which was also burnt. He identified the said panchanama Exhibit 36 and signature on it.

13. Perusal of the spot panchanama recorded by the Police Sub-Inspector, Osmanabad shows that, the house has two doors. Adjacent to it, there is 10 Ft. x 12 Ft. room. It is noted that, the tiles of the said room were having smell of kerosene and also there were burnt pieces of Sari and matchstick box and there were also burnt pieces of matchstick. Curtain of the door was also burnt. In another adjacent room, red burnt pieces of Sari and half burnt curtain was lying on the tiles of the room. Flowers of Artificial Garland was lying there. There were photos of God and Sofa set. In another adjacent room, one white colour can of kerosene filled with 2 liter of kerosene was found in burnt condition on the floor. In that room and in the back side of room there were domestic articles and Courtyard having tiles and water tank containing 3 ft water and on the water burnt pieces of cloth were seen floating. It is also stated that, white colour can of five liter, plastic flowers, white colour curtain having flowers of dark colour, and burnt pieces of Nylon Sari of red colour, matchbox a bottle containing 180 M.L. water from the water tank were seized and sent to the C.A.

14. Upon careful perusal of the spot panchanama and recovery of the articles from the spot, it is abundantly clear that, there was no stove, and therefore, possibility of accidental burns by bursting of stove, as stated by D.W.1 or the accused in his defence cannot be accepted and more so the Medical Officer has clearly opined that, the accidental death is ruled out.

15. There is also oral dying declaration made by the victim to the father of the victim namely Manik Bhanudas Devalkar (PW-7) complainant. In the light of the

discussion in foregoing paras, it is abundantly clear that, two dying declarations at Exhibit 19 and Exhibit 24 are duly proved by the prosecution. There is also statement of victim recorded by PW-12 at Exhibit 47 narrating the entire incident. The version of the victim, which is stated in the dying declarations at Exhibit 19 and 24 earlier and also oral dying declaration to the PW-7 also corroborates each others and same have been duly proved by the prosecution through Medical Officer Dr. Kailas Gilbale (PW-4), Police Head Constable Hanumant Kolangade (PW-2) and Executive Magistrate Dilip Yeshwantrao Deshpande (PW-3). Therefore, the said dying declarations deserve acceptance.

16. At this stage, the learned counsel appearing for the appellant by way of alternate submission submitted that, in case, this Court is not inclined to acquit the appellant in that case, the appellant's case may be considered under Exception 4 of Section 300 of the I.P. Code. According to the learned counsel appearing for the appellant, the evidence shows that, the incident occurred suddenly and in the course of sudden quarrel. It is further submitted that, there was no premeditation. The accused had suffered burn injuries, and therefore, the conviction under section 302 may be modified to 304 part II of the I.P. Code. In support of aforesaid submission, the learned counsel appearing for the appellant placed reliance on the judgment in the case of DilipJanaba Kamble V/s State of Maharashtra reported in 2013(4) Mh.L.J.(Cri.) 603, and in the case of DhirajbhaiGorakhbhai Nayak V/s State of Gujarat reported in (2003) 9 SCC 322.

17. As already observed, we are not inclined to interfere in conviction order of the trial Court. In order to appreciate the contention of the learned counsel appearing for the appellant, there was no premeditation and preplanning on the part of the appellant, it would be apt to consider the evidence of PW-7 i.e. complainant. PW-7 i.e. father of the victim in his evidence before the Court stated that, the marriage between accused and Radha was solemnized seven years back. After marriage, Venkatesh i.e. accused, under influence of liquor used to quarrel with Radha and also used to beat her. He lodged a complaint against the accused before Woman Redressal Forum, Osmanabad. Thereafter the dispute between his daughter and accused was compromised because accused told that, he would not harass Radha. This witness has specifically stated that, prior to four-five days of the

incident Radha and Venkatesh came at Jagji. Radha was telling him and his wife that, accused used to beat her as did earlier, abused under intoxication. The complainant and his wife gave understanding to the accused to behave properly and sent Radha with accused.

18. Victim in dying declarations stated that, after she was set on fire, to save herself she jumped in water tank, and therefore, it is not possible to accept the version of the accused that, he tried to extinguish the fire. Upon careful consideration of one of the dying declarations, it appears that, the appellant dragged victim inside the house and then poured kerosene, therefore, it cannot be said that, the accused had no intention to kill Radha.

19. The evidence of DW-1 Sagar Malhari Irkar that, Radha died due to accidental burns due to bursting of stove is falsified by the recovery of articles from the spot panchanama, in which there is no recovery of stove and also opinion of the Medical Officer that, death was homicidal. There is nothing in spot panchanama, which would show that, stove was there at the spot of the incident. In the light of discussion in the foregoing paragraphs, in our considered view, the impugned judgment and order needs no interference. The findings recorded by the Trial court are in consonance with the evidence brought on record. There is no perversity as such. The appeal sans merit, stands dismissed.

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