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Court : Mumbai Nagpur

Decided On : Oct-31-2014

Judge : B. R. Gavai &Amp; V. M. Deshpande

Appeal No. : Criminal Appeal No. 408 of 2012

Appellant : Suresh

Respondent : The State of Maharashtra and Another

Judgement :

Oral Judgment:

V.M.Deshpande, J.

1. The appellant is convicted by the learned Additional Sessions Judge4, Nagpur on 9.8.2012 in Sessions Trial No.457 of 2011 whereby the learned Judge convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code for committing murder of his wife Megha and directed him to suffer imprisonment for life and to pay a fine of Rs.500/- and in default to suffer further rigorous imprisonment for one month.

2. We have heard Mr.C.H.Jaltare, learned Counsel for the Appellant, Mr.S.M.Uikey, learned A.P.P. for respondent no.1/State and Mr.R.R.Vyas, learned Counsel for first informant/respondent no.2. With their able assistance, we have

gone through the record and proceedings.

3. Deceased Megha was wife of the present appellant. The couple was having two daughters and one son. The daughters are Ku.Sharyu (PW-1) and Ku. Pranjali (PW-3). According to the prosecution case, upon the first information report (Exh.16) filed by Sharyu (PW-1), Crime No.112 of 2011 was registered initially for the offence punishable under Section 307 of the Indian Penal Code on 21.6.2011. Consequently, the offence was converted for the offence punishable under Section 302 of the Indian Penal Code upon death of Megha on 3.7.2011.

4. According to the First Information Report, the first informant Sharyu completed her education upto 12th Std. at Porwal College and the process of her admission in another college was in offing. Her mother deceased Megha was working as a teacher at Primary School, Zilla Parishad, Marartoli at Yerkheda and her father Suresh was not doing any work and used to pick up quarrel with her mother Megha on account of refusal to oblige the demand of appellant for giving money for consumption of liquor.

5. The First Information Report further reveals that, on 21.6.2011, at 5 O'clock in the evening, in the house all the family members were present. The appellant was siting in the outer room under the influence of liquor. The first informant and her sister were in the kitchen. That time, the appellant came in the kitchen and used abusive words to the first informant and tried to make assault on her. Upon that, mother Megha came in the kitchen and questioned the appellant as to why he is beating their daughter. Upon that, the appellant also tried to assault Megha and demanded Rs.100/- for drinking liquor. Upon refusal by Megha, appellant picked up a can kept in the kitchen. Thereupon, Megha ran in the another room. She was followed by the father/appellant and the appellant poured kerosene in the hall upon the person of Megha and set her ablaze. According to Sharyu, her mother was helped in extinguishing fire by the first informant and people from M.S.E.B. Megha was then taken to the Roy hospital.

Since the first information was disclosing commission of offence, crime was registered.

6. P.W-7 is Sugriv Verma, a Head Constable. On 21.6.2011, he was attached to Police Station, Kamptee. On the said day, he received one MLC from Roy hospital, Kamptee. Thereupon, he went to Roy hospital and gave a letter to the Medical Officer asking him as to whether the patient is fit to give statement. The said requisition is at Exh.51. Sugriv Verma (PW-7) thereafter recorded statement of Megha. After completion of the said statement, it was read over to Megha, who admitted its contents and thereafter, he obtained right toe impression on the said statement. It is at Exh.52.

7. After completion of investigation, the Investigating Officer Dilip Wadankar (PW-9) was of opinion that sufficient evidence was appearing against the appellant, the charge sheet was filed. The learned Magistrate, in whose Court the charge sheet was filed, found that the offence was exclusively triable by the Court of Session and therefore, he passed the committal order.

8. The learned Additional Sessions Judge-I, Nagpur on 19.10.2011 framed charge against the appellant. The appellant abjured his guilt and claimed that he be tried.

9. Before the learned Court, the prosecution has examined in all nine witnesses and also relied on the dying declaration (Exh.52) of Megha. The appellant was examined u/s. 313 of the Code of Criminal Procedure and he also gave his Written Statement (Exh.61).

10. The first question that has to be answered by this Court is what is the nature of unnatural death of Megha. Whether it is homicidal, as claimed by the prosecution or whether it is suicidal in nature, as suggested by the appellant through his line of crossexamination of witnesses and his specific Written Statement u/s. 313 of the Code of Criminal Procedure.

11. From perusal of Exh.34 - post mortem report which shows that Megha suffered 64 % burn injuries and cause of death given by doctor in the said post mortem report i.e. septicemia due to burn injuries, it is crystal clear that death of Megha was unnatural one.

Now let us examine the respective claim of prosecution as well as the appellant as suggested by him.

13. In order to bring home the guilt of the appellant, prosecution relies on a) written dying declaration (Exh.52) recorded by Sugriv Verma (PW-7), b) oral dying declaration given by deceased Megha to Rajendra Naidu (PW-2) and eye witness account of Sharyu (PW-1) and Pranjali (PW-3).

14. Sugriv Verma (PW-7), upon receipt of MLC from Roy hospital, visited the said hospital. He gave requisition to the Medical Officer of Roy hospital in respect of fitness of Megha since he was intending to record her statement. The said requisition is at Exh.51.

15. Dr. Ratan Sanjiv Roy (PW-8) was present in his hospital when Megha was brought to his hospital. He immediately informed the said fact to police by giving intimation (Exh.50).

Dr.Ratan Roy has admitted about issuance of letter (Exh.51) to him and also his endorsement on Exh.51 that the patient was fit to give her statement.

16. Sugriv Verma (PW-8) claims that he has recorded statement of Megha and also asked Dr.Roy to sign the same as he was present there.

Interestingly, Dr.Ratan Roy in his evidence before the Court has stated as under :

I was not present at the time of recording of statement of the patient. However, it bears my signature. After recording the statement, I was asked to sign it. Therefore, I had signed on it.

17. In the light of evidence of Dr.Ratan Roy, it will be unsafe to rely upon Exh.52, the dying declaration recorded by the Head Constable. The Dying declaration can be recorded by any person. However, scribe Sugriv Verma claims that Dr.Roy was present at the time of recording of statement of Megha, which is falsified by evidence of Dr.Roy who has flatly denied his presence at the time of recording of statement of Megha. In that view of the matter, there is no option but to keep aside Exh.52, the written dying declaration of Megha and that cannot be the basis for

securing conviction of the appellant. Further it has to be noted that Trilokkumar Nasare (PW4) who is brother of deceased Megha immediately visited the Roy hospital. His evidence would reveal that he asked his sister as to what has happened. However, she did not disclose anything to him. His evidence would reveal that, that time the statement of Megha was not recorded and police came thereafter when he was sitting with the doctor.

18. Disclosure on the part of Megha to her brother Trilokkumar would have been the most natural disclosure. That was the first opportunity available to Megha to disclose the act of the appellant to any third person. In that view of the matter, Exh.52, written dying declaration has no evidentiary value and it is, accordingly, rejected.

19. Insofar as the oral dying declaration is concerned, Rajendra Naidu (PW-2) claims that it was made to him by deceased Megha. Rajendra resides in front of house of the appellant. He claims that, on 21.6.2011, in the evening, he was sitting in front of house with his wife and 23 other persons. That time, he noticed Megha coming out of her house in completely burnt condition. Therefore, he and his wife rushed towards her. He claims that, that time one Mr.Rode and Jayendra Naidu, the employee of M.S.E.B. also came there and they extinguished fire. It is claim of Rajendra (PW2) that, that time it was disclosed to him by Megha that Suresh i.e. the appellant poured kerosene on her and set her on fire. He further claims that he disclosed that there was some quarrel in between them. However, she did not assign any reason about the subject of quarrel.

20. Even, the oral dying declaration, if it inspires confidence, can be the basis for conviction. Now let us examine as to whether the evidence of Rajendra Naidu (PW-2) can be accepted in respect of oral dying declaration.

Rajendra Naidu is also panch on spot panchanama (Exh.19) and seizure of some articles Exh.20. These two documents are dt.21.6.2011.

21. Though Rajendra Naidu has claimed that his statement by police is recorded immediately on the same day, the record reveals that his statement is recorded on 22.6.2011 and not on the same day.

22. Prosecution has not examined said Mr. Rode or Jayant Naidu who were present at the time of oral dying declaration made to Rajendra. Their examination before the Court would have been a corroborated piece of evidence in respect of oral dying declaration made to Rajendra Naidu. It assumes importance in view of the fact that the claim of Rajendra Naidu that the statement was recorded by the police immediately on the same day was found to be incorrect on the said factual aspect. Therefore, according to us, it will be hazardous to secure conviction of such uncorroborated evidence of Rajendra (PW-2). Accordingly, we cannot keep any reliance on the statement of Rajendra.

23. That leaves us with the evidence of Sharyu (PW-1) and Pranjali (PW-3) who are daughters of the appellant and deceased Megha. They claimed that they have witnessed the attrocities committed on their mother at the hands of their father by setting her ablaze on pouring kerosene.

24. Merely because the witnesses are coming forward and deposed against a particular person, the Court should not rush to accept their version unless their evidence is properly scanned and evaluated in true perspective.

25. Sharyu (PW-1) claims that her father was not doing any work. Her claim in that behalf appears to have been falsified by her maternal uncle Trilokkumar Nasare (PW4) who has admitted in his evidence that, prior to some day of incident, the appellant had purchased Indigo Car for taxi business. It is to be noted that the appellant lost his job due to closure of Spinning Mill.

26. Further, according to Sharyu, on the day and time of the incident, the appellant was under the influence of liquor. She and her sister were working in the kitchen. That time, the appellant came in kitchen and assaulted on her. Therefore, she raised cries and her mother Megha came there and the questioned the appellant as to why he is beating Sharyu and on that account, there was exchange of words between them and that time, her father demanded Rs.100/- for consuming liquor, which was refused by her mother. Hence, her father raised kerosene can and poured the same on her mother. There is variance in the first information report lodged by Sharyu and her evidence to the effect that her evidence is silent that, at that time, the appellant tried to assault upon Megha and, therefore, Megha ran in

the hall.

27. From the evidence of Sharyu (PW-1), the first information report (Exh.16) and the evidence of Pranjali (PW-3), it is clear that kerosene was poured upon Megha in hall near TV and there, she was set ablaze.

28. Exh.19 is the spot panchanama which was drawn immediately on 21.6.2011. Thus, Exh.19 a contemporaneous document to the incident. The said panchanama does not reveal that, at the time of drawing the said panchanama, panchas or the Investigating Officer noticed any kerosene residues either on the floor of the said hall or on any article including TV. The said panchanama is also completely silent about said aspect. Even panch Rajendra Naidu (PW-2) or the Investigating Officer Dilip Wadankar (PW-9) did not smell of kerosene in the said hall when they visited the spot of occurrence.

29. Further, it is not the case of prosecution that the appellant was not having habit of smoking. If the entire evidence of Sharyu (PW1) and Pranjali (PW-3) is scanned, then it is clear that, from the hall, the appellant entered in the kitchen and picked up quarrel with Sharyu (PW-1). However, the evidence of Sharyu (PW-1) shows that the match box was kept near the window. There was no reason for availability of matchbox in the hall. Thus, presence of match box in the hall itself creates doubt.

30. In the crossexamination, Sharyu (PW-1) has admitted as under :

It is true that, today, I have read my statement. It is true that police had given the same to me. It is true that the said police Officer is sitting in the Court hall.

31. In the backdrop of the aforesaid evidence, it will be useful to refer reported decision by the learned Single Judge of this Court (R.C.Chavan, J) reported in 2006 (2) Mh.L.J. (Cri) 1210, Sharad s/o. Namdeorao Shirbhate vs. State of Maharashtra.

32. In para 10 of the said reported Judgment, the learned Single Judge found that Pundlik (PW-1) has admitted that the police had read over his statement to him and also told him to tender the evidence as per his statement. The learned Single

Judge has observed thus :

There would indeed be nothing wrong in the witness refreshing his memory, but that ought to be done before the Court and not outside the Court. In order to test the veracity of a witness, he would be required to recollect the incident out of his own memory and should he falter on some material aspect, he could be allowed to refresh his memory with reference to the contemporaneous records of the incident created by the police. It would not be permissible for such witness to stealthily refresh his memory before entering the Court and deposing about the entire evidence giving minute details as if he was reeling them out from his memory. Therefore, the objection to the reliability of evidence of PW-2 Prabhakar taken by learned Counsel for the appellant is valid. (emphasis is supplied by us).

We approve the dictum of the learned Single Judge in that behalf.

33. From the aforesaid evidence of Sharyu, it is clear that her statement was supplied to her by police and it was read by her stealthily and not in the presence of the Court. Further, presence of the police Officer, who has given her statement in the Court hall at the time of evidence, clearly shows that Sharyu (PW-1) was under the thumb of the Police Officer.

34. Nodoubt it is true that the Investigating Officer or the Police Officer should take care and steps in order to see that the culprit is brought home to his guilt; however, at the same time, the Police Officer should not show unnecessary interest which would unnecessarily create doubt about the Police Officer. In view of the fact that Sharyu (PW-1) has read her previous statement supplied to her by Police Officer who was present in the Court hall before entering into witness box, loses her reliability as a witness. It is to be noted that dying declaration (Exh.52) by the Police Officer is recorded at 6.50 hours. From the evidence of Trilokkumar (PW-4) it is clear that Sharyu (PW-1), Pranjali (PW-3) and son Kaustub were present in the hospital.

Exh.17 is the printed F.I.R. It shows that the first information report is recorded at 19.00 hours, which clearly shows that the F.I.R. lodged by Sharyu (PW-1) is after recording of Exh.52, the dying declaration of Megha.

35. Insofar as the evidence of Pranjali (PW-3) is concerned, she has corroborated the version of Sharyu on all material aspects. Not only that, she has also in clinching words stated that kerosene was poured on her mother near TV in the hall. Pranjali was present in the hospital. She has seen the police first time in the hospital. She has admitted that, on the day of incident, she did not disclose to the police that she has seen that her father has set her mother on fire. Belated disclosure to police, though opportunity was there, coupled with the fact that the claim of this witeness about pouring of kerosene in the hall near TV belied by contemporaneous document (Exh.19), creates serious doubt about her testimony.

36. Now let us examine the theory as suggested by the appellant about suicide by Megha herself through the line of crossexamination of Sharyu (PW-1) and Pranjali (PW-3) and Written Statement of the appellant u/s. 313 of the Code of Criminal Procedure. According to the appellant, it was brought to his notice that Sharyu (PW-1) used to wander with some boys. Therefore, on the day of incident, when that fact was brought to his notice, when he returned to the house, Sharyu was in the kitchen. That time, appellant questioned Sharyu in respect of her behaviour. That time, Sharyu not only gave evasive replies, but also counter questioned the appellant. Therefore, he gave two slaps to Sharyu. That time, Megha came in the kitchen and asked as to why he has slapped Sharyu. Upon that, he disclosed the behaviour of Sharyu and alleged that Megha has no control over the children. Upon that, Megha picked up quarrel with him and gave threats that she will set her ablaze. Upon that, the appellant came in the front room, removed short and was sitting there. That time, Megha came running from the kitchen in a burning condition. The appellant tried to extinguish fire with a towel. In that process, he also received burn injuries on his abdomen. In the meanwhile, Megha was taken to the Roy hospital. Therefore, while he was to visit Roy hospital, near Roy hospital, he was apprehended by police.

37. From the evidence of Sharyu (PW-1), it is clear that, on the day of incident, she and her sister were working in the kitchen. According to her, that time, the appellant came in the kitchen and assaulted on her. She has not attributed any reason for assault on her. No father will unnecessarily try to assault a grown up daughter. In that behalf, the explanation given by the appellant about giving slaps

to Sharyu appears to be plausible one.

38. The appellant has claimed that he tried to extinguish fire of Megha with the help of the towel. It is to be noted that Rajendra (PW-2), who has extinguished fire with the help of Mr. Rode and Jayendra Naidu, has stated that his wife has brought blankets and extinguished fire. There is no reference to any towel in the entire prosecution case except in the statement of the appellant u/s.313 of the Code of Criminal Procedure. In that behalf, it will be unfair to the appellant if the seizure memo (Exh.20) is not noticed. Exh.20 is the seizure memo which is duly proved by Rajendra Naidu (PW-2).

Under the said seizure memo, plastic can of kerosene, match stick, match box and burnt saree pieces are seized. What is important to note is the following :

Towel chowkdi santrya rangacha tyala saadicha tukda jalalelya chikatlela.

Seizure of this towel from the spot, to which the burnt saree piece was stuck, shows that the appellant has tried to extinguish fire with the help of said towel.

39. Deonand Ganvir (PW-5) was attached as an ASI to the Police Station, Kamptee and was on duty as a Day Officer on 21.6.2011. He registered the first information report (Exh.16). His evidence would reveal that the police party learnt that the appellant was wandering in Bazaar square and therefore, he went there and brought him. Investigating Officer Dilip Wadankar (PW-9) arrested him.

Deonand Ganvir (PW-5) has admitted as under :

Bazaar chowk is near main road. It is near Roy hospital.

Further, the Investigating Officer Dilip Wadankar (PW-9) has stated in his evidence, which is reproduced hereinunder :

It is true that when I had arrested the accused, there were burn marks on his stomach and he was referred to the hospital. I had not inquired with anybody as to how the accused had sustained burn injuries.

40. The arrest form of the appellant is at Exh.59. It is dt.21.6.2011 i.e. on the day of incident itself. It shows that the appellant was having burn injuries to his stomach. Though the appellant was referred for his medical examination in the hospital, his medical report is not coming on record. This assumes importance because, as per the claim of eye witnesses, at the time of incident, the appellant was under the influence of liquor. If that be so, when the appellant was referred for his medical examination, that would have been noticed in his medical examination. Hence, suppression on the part of the prosecution in respect of the medical report of the appellant clearly tends to give weightage to his defence, as appearing in his statement u/s.313 of the Code of Criminal Procedure.

41. On evaluation of the evidence brought on record, as done in the preceding paragraphs, it is absolutely clear and there is no doubt in our mind that the prosecution has utterly failed to prove that Megha died homicidal death. On the contrary, the circumstances, as appearing in the prosecution case, clearly show and suggest that there is a grain of truth in the defence of the appellant. That leads us to pass the following order.

ORDER

The Appeal is allowed.

The Judgment and Order of conviction and sentence dated 9th August, 2012 passed by the learned Additional Sessions Judge4, Nagpur in Sessions Case No.457 of 2011 is quashed and set aside.

The appellant is acquitted of the offence punishable under Section 302 of the Indian Penal Code.

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

Fine amount, if any, paid by the appellant, be refunded to him.

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