

Suresh and Others Vs. State of Maharashtra

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Court : Mumbai Nagpur

Decided On : Jul-04-2014

Judge : B.P. Dharmadhikari & C.V. Bhadang

Appeal No. : Criminal Appeal No. 218 of 1999

Appellant : Suresh and Others

Respondent : State of Maharashtra

Advocate for Pet/Ap. : Shri. R.M. Daga

Judgement :

C.V. Bhadang, J.

1. The appellants were prosecuted for the offence punishable under Section 302 r/w 34 of the Indian Penal Code in Sessions Case No.78/1994 on the file of the learned Additional Sessions Judge, Achalpur. By a judgment and order dated 28.7.1999, the appellants came to be convicted for the offence as charged and have been sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/- and in default to suffer rigorous imprisonment for two years. Feeling aggrieved, the appellants have come up in appeal.

2. The prosecution case may be briefly stated thus :

Appellant nos.3 and 4 are husband and wife, while appellant nos.1 and 2 are their sons. Vimal is the daughter of appellant nos.3 and 4 and she was married with now deceased Arjun Rathod. Both the appellants and the deceased were staying in the same locality at Sarfabad (Hayapur). It is said that the marriage of Arjun with Vimal was his third marriage and there were certain disputes between them which had led Vimal lodging a report of ill-treatment against deceased Arjun and Arjun was arrested in pursuance thereof, about a month before the incident in question.

On 5.1.1994 there was a sports event at the school playground at village Sarfabad (Hayapur). PW 1 Bhaurao Bharsakde, who happens to be the Police Patil of village Hayapur, was present at the sports event. At about noon time, appellants Suresh, Shrikrishna and Dadarao, went to the playground and informed PW 1 Bhaurao that deceased had consumed poison at their house. PW 1 Bhaurao along with one Sudhakar and Kashinath started going to the house of the appellants and found that deceased Arjun was on the street talking to his wife Vimal and he was shouting. It is said that prior to arrival of Bhaurao and Ramesh, Draupada, the mother of deceased, who was at her house, heard a commotion which led her to come out of the house and find that her son i.e. deceased Arjun was lying in the courtyard of the appellants. She rushed to her son and deceased had allegedly informed her that his brothers-in-law had caught hold of him and the parents-in-law had administered poison to him. PW 1 Bhaurao inquired with Arjun, as to what has happened, when Arjun informed the same thing to him. It is said that Arjun informed that he is feeling numbness in his body and is getting cramps and, therefore, cannot write. PW 1 Bhaurao did not have a pen and paper with him and, therefore, he went to his house.

It is said that the deceased then went to the house of PW 1 Bhaurao and told him about the incident in which appellant nos.1 and 2 had caught hold of him and appellant nos.3 and 4 having forcibly administered poison to him. This was reduced into writing by PW1 Bhaurao, vide Exh.17. It was signed by deceased as well as PW1 Bhaurao and two witnesses namely Sudhakar Bharsakde, the Police Patil of Sarfabad and one Kashinath Gorde, the Ex-Sarpanch. It appears that, in the meantime, the deceased was taken to Primary Health Center, but he could not survive. On the basis of information, a case of accidental death was registered and

investigation was started in which chit Exh.17 came to be seized. An inquest panchanama was drawn and the dead body was sent for post-mortem examination. On account of there being symptoms of poisoning, the viscera was preserved and sent for the report of the chemical analyser and the report Exh.45 showed presence of insecticide. The investigating officer also recorded the statements of the witnesses and on completion of the investigation, a chargesheet came to be filed in the court of Judicial Magistrate, First Class, Achalpur, which was committed to the Court of Sessions.

3. The learned Sessions Judge framed charge against the appellants to which the appellants pleaded not guilty and claimed to be tried. The defence of the appellants is one of total denial and false implication, particularly on account of political rivalry between the faction belonging to PW1 Bhaurao.

4. The prosecution examined in all ten witnesses at the trial and produced the record of the investigation. The appellants neither entered into the witness-box nor examined any defence witness.

5. The learned Sessions Judge, on the basis of three oral dying declarations to PW 1 Bhaurao, PW 3 Ramesh and PW 2 Draupadabai and the one recorded by PW 1 Bhaurao in the form of chit Exh.17 held that the prosecution has established its case and in that view of the matter, the appellants came to be convicted and sentenced as aforestated.

6. We have heard Shri R.M. Daga, learned counsel for the appellants and Shri D.B. Patel, learned Additional Public Prosecutor for the respondent-State. With the assistance of the learned counsels, we have gone through the entire evidence and the impugned judgment.

7. It is submitted by Advocate Shri Daga for appellants that the evidence of the prosecution witnesses, as to oral dying declarations and in particular that of PW1 Bhaurao, does not inspire confidence. The learned counsel was at pains to point out that there are material omissions of these witnesses narrating the incident to the police which have been brought on record which will have the effect of discrediting in the evidence of these witnesses. The learned counsel also

submitted that the perusal of evidence of PW1 Bhaurao and chit Exh.17 would clearly show that evidence is got up and no reliance whatsoever can be placed on the same. The learned counsel would submit that the evidence of the prosecution witnesses, which are either related to the deceased or have been admitted to belonging to a faction as per the politics in the village, ought to have been scrutinized carefully. It is submitted that considering the parameters of appreciation of evidence of such witnesses, the evidence would clearly fall short to inspire confidence. Learned counsel has submitted that the prosecution has also failed to establish the actual spot of incident where the poison was allegedly administered to deceased. Learned counsel also submitted that evidence, as to the discovery and seizure of the receipt of purchase of Endosulfan, would be inconsequential.

It is submitted that farmers usually have such insecticides in their possession and that itself would not be an incriminating circumstance. It is also pointed out that the panch witness examined on the spot panchanama has failed to state about the seizure of tin of "Endosulfan", which was allegedly found lying on the spot. Learned counsel submitted that admittedly the deceased and his wife Vimal were having dispute and the deceased was prosecuted on the basis of complaint lodged by Vimal, a month before the incident. It was also pointed out that there is evidence to show that the deceased and Vimal were quarreling on the road at the time of the incident. It is, therefore, submitted that the possibility of the deceased committing suicide and then falsely implicating the appellants cannot be ruled out and was a probable defence. Thus, while submitting that the prosecution has failed to establish that the deceased met with homicidal death, it is submitted that there is a reasonable probability brought on record of the deceased having committed suicide. It is, therefore, submitted that the impugned judgment be set aside and the appellants be acquitted of the charge.

8. On the contrary, learned APP Shri Patel for respondent-State has supported the impugned judgment. It is submitted that the evidence of the prosecution witnesses is natural and in consonance of the probabilities of the case. It is submitted that the evidence of PW 1 Bhaurao, who is Police Patil, is natural and has not been shaken in the cross-examination. It is submitted that the deceased has made four

dying declarations, out of which, three are oral and one in writing immediately prior to his death. The evidence led in that regard being natural, has rightly been accepted. The learned APP was at pains to point out that the defence has not probabalised the theory of deceased having committed suicide. In this view of the matter, it is submitted that the appeal be dismissed.

9. At the outset, it may be mentioned that inter se relationship between the parties is not in dispute. It is also not in dispute that Vimal, the daughter of appellant nos.3 and 4, was married to the deceased and it was the third marriage of the deceased. It is also not in dispute that the house of the deceased and the accused is situated at a distance of about 100 ft. It has also come on record that at the time of the incident Vimal was staying at her maternal house i.e. with the appellants. It is also not in dispute that sometime prior to the incident, on count of certain disputes and differences, Vimal had lodged a complaint of ill-treatment against the deceased and his other family members.

10. It would appear from the evidence of PW9 Dr. Rajendrakumar Bhattad, who conducted the post-mortem examination, opined that the cause of death was on account of cardio respiratory failure secondary to poisoning. The viscera was also sent for the report of the Chemical Analyser and the Chemical Analyser report Exh.46 would show that organochloro insecticide Endosulfan (Thiodan) were found in the viscera. The level of Endosulfan detected was also found equivalent to as noticed in fatal poisoning cases involving Endosulfan. Thus, there cannot be any manner of doubt that the deceased died on account of poisoning, more particularly because of organochloro insecticide Endosulfan (Thiodan). The question is, whether the appellants had forcibly administered the same to the deceased, as claimed by the prosecution.

11. The learned Sessions Judge, on consideration of the evidence led by the prosecution, has come to the conclusion in para 18 onwards of the judgment, that there are four dying declarations made by the deceased one after the other, three, out of which, are the oral dying declarations and one is in writing in the shape of Exh.17. The learned Sessions Judge has found the dying declaration to be natural and worthy of credence. It has also been found that the deceased was in a fit

condition of making disclosure as claimed by this witness. In such circumstances, the learned Sessions Judge has based the conviction on the multiple dying declarations as aforesaid.

12. The law relating to a case based on dying declaration is now too well settled to be restated. It is now well settled that the dying declaration if found to be natural and one inspire confidence and which is not found to be a result of tutoring or figment of imagination can be relied upon. The law does not require a particular form in which the dying declaration is to be made or recorded. In a given case even oral dying declaration, is found to be acceptable, can be acted upon. The court, in such circumstances, should be satisfied as to the physical and mental condition of the deceased to make such a disclosure. It has also to be found that the deceased indeed had such an opportunity to make the disclosure. If this is proved, the court has to be further satisfied that the dying declaration, as made is truthful and not tainted on account of an attempted tutoring or it is not the result of figment of imagination. If these conditions are satisfied, the court can act upon the dying declarations. In an appropriate case, the court would make an attempt to look for corroboration, circumstances or otherwise to satisfy its judicial conscience.

13. Turning to the present case, the oral dying declarations are said to be made to the witnesses PW1 Bhaurao, who is Police Patil, PW2 Drupadabai, who is mother of the deceased and PW3 Ramesh Dhule. PW1 Bhaurao has in addition reduced the dying declaration in writing in the presence of two witnesses namely Sudhakar Bharsakde, who is said to be the Police Patil of Sarfabad and one Kashinath Gorde, the Ex-Sarpanch, none of whom are examined as prosecution witnesses. It would be now necessary to look into the evidence of these witnesses and the declaration Exh.17 whether those would be sufficient to sustain the conviction as recorded against the appellants.

14. PW1 Bhaurao Bharsakde has stated that on 5.1.1994 there were school tournaments at the Zilla Parishad School at Hayapur where he was present at the playground when appellants Suresh (A1), Shrikrishna (A2) and Dadarao (A3) came there and informed him that their son-in-law i.e. deceased Arjun has consumed insecticide at their house. This witness has stated that Sudhakar

Bharsakde and Kashinath Gorde were also present at the playground. He along with Sudhakar and Kashinath went to the house of the accused. When the trio had reached near the house of one Ganesh Dhule, they saw the deceased on the street with his wife Vimal and both of them were quarreling. This witness then asked Arjun, what has happened, upon which, Arjun told that his brother-in-law Suresh and Shrikrishna caught hold of him and Dadarao and Anusuyabai administered "poisonous medicines to him". This witness confirmed with the deceased as to whether what he is telling is truth, which the deceased answered in the affirmative. It has further come in the evidence of PW1 Bhaurao that he asked the deceased to put the same in writing, when the deceased said that he is getting cramps and he is feeling numbness of the body and, therefore, cannot write.

15. Soon thereafter, PW2 Drupadabai, the mother of deceased, came there, took the deceased to her house and served him salt water so as to make him vomit the poison in his body. This witness then went to his own house along with Kashinath and Sudhakar and after five minutes thereafter the deceased came to his house alone and asked this witness to write down that the appellants Shrikrishna and Suresh caught hold of him and Dadarao and Anusuyabai having administered poison to him. This witness accordingly recorded the same and obtained the signatures of Sudhakar and Kashinath. That statement is at Exh.17.

In the subsequent part of the evidence, it has come that this witness called Janrao Rathod, the cousin of the deceased, asking him to bring his cart and take the deceased to Khallar for medical treatment. This witness has stated that he handed over the chit Exh.17 to the police on their arrival in the village on the same day which was seized by the police in the presence of two panchas namely Rajendra Bharsakde and one Baburao Pandit.

In cross-examination, this witness has admitted that he did not state before the police in his statement of having asked the deceased on the street near the house of Ganesh Dhule as to what had happened and the deceased having told him that he was caught by Suresh and Shrikrishna, whereas Dadarao and Anusuyabai having administered poison to him. Thus, this witness has admitted in categorical

terms that this material part of his evidence was not stated by him to the police during his statement. This witness was further cross-examined with certain other improvements namely he having informed the police that the deceased being asked as to whether what the deceased is telling is truth and the deceased having informed that whatever he is saying is truth as also the deceased having informed that he is getting cramps and feeling numbness of the body and cannot write. This witness has stated that he cannot assign any reason as to why that is not recorded in the police statement.

This witness is then cross-examined on the point of certain rival groups in the village. This witness has stated that there is a group Gram Panchayat of village Hayapur and Sarfabad and there are party factions in the village, one led by Raju Bharsakde and the other by Punjabrao. Rajendra Bharsakde is the brother of this witness and is PW5 and is a panch on the spot panchanama. This witness has stated that he does not know, whether the appellants belong to the party led by Punjabrao. This witness has also admitted that he is on cordial terms with Sudhakar and Kashinath.

16. As noticed earlier, Sudhakar and Kashinath, who were allegedly with PW1 Bhaurao right from their presence at the playground at the tournament till the statement of the deceased was reduced into writing vide Exh.17 are not forthcoming as prosecution witnesses. We have carefully examined the chit Exh.17 and we find that the manner in which the same is written does not inspire confidence. It has been specifically suggested to PW1 Bhaurao that the chit does not bear the signature of the deceased. A careful perusal of the signature which is purportedly of the deceased would clearly show that it cannot be of a person who has consumed poison and is getting cramps and feeling numbness of the body. The interlinear spacing in the chit right from the starting till the signature would tend to show that the possibility of the contents being written after the signature was obtained, cannot be ruled out. There is a separate portion on the left side after the alleged signature of the deceased with regards the date and time of the incident. There is no reason why this was not recorded earlier. We have given our anxious consideration to the said chit and we are of the view that the evidence of deceased so narrated which was reduced into writing does not inspire confidence.

17. PW6 Baburao Pandit, who is one of the panch on seizure of the chit, was declared hostile and was cross examined by learned APP. This witness has stated in the cross-examination that the chit was handed over by one Rambhau Patil to PSI Gawande in his presence. It is not known, as to how, the chit which was in possession of PW1 Bhaurao was handed over to PSI Gawande, the investigating officer by one Rambhau Patil. Be that as it may, we do not find that the evidence of PW1 coupled with the writing Exh.17 would inspire confidence about the deceased having made any such statement or about truthfulness of the contents therein.

18. PW2 Drupadabai is the mother of the deceased. This witness has stated that on the day of occurrence, the deceased had gone for work with the water supply department at Kokarda at about 7.00 am in the morning and returned about 10.00 am. After that the deceased alone went out. After some time, this witness heard shouts. When she came out, she saw that the deceased was lying in the courtyard of the house of her father-in-law i.e. the appellants. When this witness went to the deceased, deceased informed that his brother-in-law had caught hold of him and the mother-in-law and the father-in-law had administered Endosulfan to him forcibly. This witness rushed to the house of her elder son to seek help and, thereafter, fainted and she does not know as to what happened thereafter.

In the cross-examination, this witness has stated that she did not approve the marriage of the deceased with Vimal. The marriage was also not approved by her son Bhimrao and daughter. Prior to the incident, the deceased was arrested by the police on the basis of report lodged by Vimal. This was one month before the incident in question and on count of this, she had a grudge against the appellants because of arrest of the deceased made by the police.

This witness was thereafter cross-examined on account of certain improvements. This witness has stated that she had narrated to the police of she having seen deceased lying in the courtyard of the house of her in-laws but has no reason as to why this does not find place in the police statement. The fact about the deceased having narrated that he was administered 'poison' is also by way of improvement. This witness did not tell anybody on the way back to her house before she fainted

of the alleged disclosure made by the police to her.

19. It would be significant to note that PW1 Bhaurao has stated that after he found the deceased quarreling with Vimal in front of the house of Ganesh Dhule and after the deceased narrated the happenings to PW1 Bhaurao that PW2 Drupadabai arrived there. However, the evidence of PW2 Drupadabai would show that she had noticed the deceased lying in the courtyard of the house of the appellants. PW1 Bhaurao does not state anything about the disclosure made by the deceased to PW2 Drupadabai and equally the evidence of PW2 Drupadabai is silent about any such disclosure being made to PW1 Bhaurao.

20. PW 3 Ramesh Dhule was also incidentally at the school playground on the day of the incident witnessing the games. This witness has stated that Vimal, the wife of the deceased, came at the playground and was saying that her husband Arjun had consumed poison and is abusing. Thereupon, this witness and his brother Ganesh and some other villagers went to the house of accused Dadarao and found that the deceased was hurling abuses. This witness and others caught hold of the deceased and his mouth was stinking of insecticides. Deceased was taken to his house and administered salt and tobacco water, so that he may vomit. After a short while, Bhimrao, the brother of the deceased, came there and took the deceased to the house of the Police Patil. This is the only evidence of this witness as he has stated that thereafter he returned back to witness the games. This witness, at the fag end, has stated that when the deceased was being taken in the bullock-cart, he jumped out, slapped Dadarao and said that he is the person who had administered endrine to him. This is treated to be the third oral dying declaration which evidently does not name anybody else than the appellant Dadarao.

In the cross-examination, this witness has admitted that the deceased was saying that his brother-in-law has falsely involved his mother and, therefore, he shall take the revenge. It would appear that PW3 has given entirely different version of the wife of the deceased having coming to the playground and having informed about the deceased consuming poison and hurling abuses. It appears that this witness had noticed that the deceased was then at the house of the appellants and was

giving abuses. He was caught hold of him and taken to his house and administered salt and tobacco water. The evidence of this witness is totally silent about the presence of PW2 Drupadabai, PW1 Bhaurao and for the matter of that of the deceased having made any disclosure implicating the appellants.

It would be further significant to note that according to this witness the brother of the deceased had taken him to the house of the Police Patil, however, the evidence of PW1 Bhaurao is that the deceased had come alone when the statement was reduced into writing.

21. On over all consideration of the evidence, we do find that it is discrepant inter-se and also improbable. Admittedly, there were disputes between the deceased and his wife and the family members of the deceased had disapproved the marriage between the deceased and Vimal. The witnesses have also admitted as to existence of certain political faction in the village. Not only that, only a month before, the deceased was arrested on the basis of the report lodged by Vimal. There is also evidence on record that the deceased was seen quarreling with his wife on the street. Thus, the possibility of the deceased consuming the poison in a fit of rage cannot be ruled out. We have already found that Exh.17 does not inspire confidence.

22. In that view of the matter, we are of the considered view that this would be a case, wherein two views would be equally possible and one favouring the appellants would evidently prevail. We therefore find, that this is a case, wherein the appellants would be entitled to benefit of doubt. Consequently, the following order is passed :

ORDER

The appeal is allowed. The impugned judgment of conviction and sentence is hereby set aside. The appellants are acquitted of the offence as charged. Their bail bonds stand cancelled. The order, as regards disposal of the property, stands.