

Dilip Vs. State of Maharashtra

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Court : Mumbai Aurangabad

Decided On : Apr-20-2016

Judge : R.M. Borde & K.L. Wadane

Appeal No. : Criminal Appeal No. 668 of 2012

Appellant : Dilip

Respondent : State of Maharashtra

Judgement :

R.M. Borde, J.

1. Accused/appellant was tried for commission of offence of murder of his wife Sonabai in Sessions Case No.57/2011 before the Court of Sessions at Nanded and has been held guilty for commission of offence under section 302 of the Indian Penal Code and, is sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.1,000/-, in default, to suffer six months rigorous imprisonment.

2. According to prosecution, accused Dilip is the husband of deceased Sonabai and they were residing together alongwith son Amol at Janta Colony, Nanded in the rented premises owned by Arunabai Mane PW2. The incident in question has occurred on 27.11.2010 at about 9.30 pm at the rented residential house of the accused. It is alleged that accused was suspecting fidelity of his wife and used to beat her. On 27.11.2010 at about 9.30 pm while deceased Sonabai was at the

residence, accused came in drunken condition and started abusing her. He assaulted deceased on the count of her refusal to give money for purchasing liquor. It is alleged that accused shut the door and bolted it from inside. He took up plastic bottle containing kerosene and poured kerosene on the person of the deceased and set her on fire by throwing lighted matchstick. Deceased got fire and raised hue and cry. Upon hearing shouts, neighbours and the land lady Arunabai rushed on the spot. Accused ran away from the house. It is stated that deceased Sonabai was admitted in Government hospital at Nanded. At the hospital, after her admission, her statement was recorded by Head Constable Ashok Handebag at about 1.30 pm on 28.11.2010 after securing certification from the Medical Officer in respect of condition of the patient. On 29.11.2010, dying declaration of deceased was recorded by Special Executive Magistrate Mahesh Wadajkar wherein the deceased implicated the accused as a culprit who poured kerosene on her person and set her ablaze. Deceased Sonabai died at the hospital on 14.12.2010. She had suffered 46% burn injuries and cause of her death is septicemic shock due to superficial deep burn injuries.

3. After completing investigation, charge sheet was submitted to the Court. The case being triable by the Court of Sessions, it was committed to the Sessions Court for trial. Charge of commission of offence under section 302 of the Indian Penal Code was framed against accused vide exh. 6 to which he pleaded not guilty and claimed to be tried. Defence of accused is of denial. According to him, deceased got burns accidentally while preparing food.

4. In order to substantiate guilt of the accused, prosecution has examined eleven witnesses. The case merely rests on two dying declarations recorded by Police Head Constable Ashok Handebag and Special Executive Magistrate Mahesh Ajabrao Wadajkar. With the assistance of learned counsel appearing for accused/appellant as well as learned APP, we have scanned the evidence. According to us two consistent dying declarations wherein deceased has unequivocally stated that accused/appellant is the culprit who poured kerosene on her person and set her ablaze, need to be accepted. PW 10 Ashok Handebag has stated in his deposition that on the relevant day i.e. 27.11.2010 from 20.00 hours to 28.11.2010 he was on patrolling duty. He received phone message from PSO

Shivajinagar at 1.00 am informing that patient has been admitted which is a medico legal case and that he should rush to the Government hospital, Nanded. On MLC report, name of patient is recorded as Sonabai Dilip Sonawane. He went to the Government hospital and contacted Medical Officer of ward No.14 and informed him that he intends to record statement of the injured lady. The Medical Officer took him to the patient who was identified as Sonabai. Medical Officer examined the patient and made endorsement certifying that the patient is in a position to talk. The witness thereafter proceeded to record statement of deceased Sonabai. PW 10 Ashok recorded her statement as per her narration. Deceased Sonabai affixed her thumb impression on the statement. Medical Officer after recording of statement again examined the patient and made endorsement on the dying declaration below recording of the statement that the patient is conscious. Police Head Constable Ashok thereafter went to the police station and on the basis of said statement, crime came to be registered.

On perusal of dying declaration exh. 22 recorded by PW 10 Ashok, it is revealed that deceased Sonabai has in unequivocal terms stated that it is accused Dilip who came in drunken condition and picked up quarrel with her. After entering the room he bolted the door from inside, he picked up plastic bottle containing kerosene and poured the same on her person and set her on fire by igniting matchstick. Deceased shouted for help, thereupon the neighbours and the landlady came and they admitted her to the Government Hospital. Another dying declaration has been recorded by PW 9 Mahesh Wadajkar, Special Executive Magistrate. Mahesh has stated in his deposition that on 28.11.2010, he received requisition letter from police requesting him to record statement of Sonabai. The copy of the letter is produced on record and marked as exh. 37. He thereupon reached the burn ward of Government Hospital, Nanded at about 5.20 pm. He introduced himself to Dr. Nikhil Bhambre, Medical Officer attached to burn ward and informed him that he intends to record dying declaration of patient Sonabai. The Medical Officer took him near the bed of the patient. The witness further states that he drove out relatives of deceased and accused who were near the patient. Medical Officer examined the patient to ascertain her condition and made endorsement on the statement that the patient is in a position to talk. Witness introduced himself to the patient. The witness further states that he gave her oath

before recording of her statement. The statement was reduced into writing as per her narration.

The witness further states that he took her thumb impression on the statement. Medical Officer who was present there examined the patient and put endorsement in respect of her condition below the statement. Dying declaration is admitted in evidence and is at exh. 39. There is nothing in the cross-examination which falsifies the facts narrated by the witness or which create any doubt in respect of veracity of the statement of the witness. On perusal of dying declaration at exh. 39, it appears to be substantially same as recorded by Head Constable Ashok at exh. 22. In the statement recorded by Executive Magistrate, it is stated by deceased that at about 9.30 to 10.00 pm on 27.11.2010, accused came back to the residence in drunken state and put lock to the door from inside. It is further stated that accused raised quarrel with her and abused her in filthy language. He extended threat to kill her and also asked her to given consent for divorce. It is alleged by Sonabai that thereafter accused poured kerosene on her person and set her on fire. Accused himself poured water on her person and thereafter ran away. It is stated that at the relevant time her minor son Amol was at the residence.

5. PW 8 Dr. Nikhil has been examined by prosecution to prove endorsement in respect of condition of the patient put by him on dying declaration recorded by PW 10 Head Constable Ashok as well as PW 9 Special Executive Magistrate Mahesh Wadajkar. PW 8 stated in his deposition that police Head Constable recorded dying declaration of deceased on 28.11.2010 at about 1.30 am and at the relevant time the patient was in a position to make statement. The witness has admitted endorsement put on dying declaration at exh. 22 recorded by Head Constable Ashok as regards condition of the patient. The witness has further deposed about recording of statement by PW 9 Mahesh Wadajkar, Special Executive Magistrate, and has also certified correctness of the endorsement made by him in respect of condition of the patient before and after recording of the statement by the Special Executive Magistrate. It thus can be concluded that at the time of recording dying declaration by Head Constable Ashok as well as PW 9 Mahesh Wadajkar, Special Executive Magistrate, the patient was in a condition to speak. Both the witnesses

have recorded dying declarations in observance of the procedure and after ascertaining condition of the patient. Learned counsel appearing for the accused vehemently contends that there are variances in the dying declarations recorded by PW 9 Mahesh and PW 10 Ashok.

It is contended that in the dying declaration exhibit 39 recorded by the Special Executive Magistrate, the deceased is stated to have deposed that after reaching home accused put lock to the entrance door from inside and that he also asked her to agree for divorce. The inconsistencies that have been pointed out are in respect of pouring water on her person by her husband and reaching her to the hospital after the incident by her parents. In the statement at exh. 22 recorded by Head Constable Ashok, the deceased has stated about bolting the door from inside after accused reached home. In the dying declaration recorded by PW 10 Ashok, it is alleged that accused Dilip was demanding money for purchasing liquor, which fact does not appear to have been stated in the dying declaration at exh. 39. The act of pouring water by the husband after setting her on fire is not stated by her in the dying declaration at exh. 22 whereas in dying declaration at exh. 39, it is stated that her neighbours and landlady reached her to the hospital. The discrepancies in both the dying declarations pointed out by learned counsel for accused are not sufficient to disbelieve the dying declarations which are otherwise consistent. In the dying declaration at exh. 22, the deceased has stated that accused Dilip was suspecting her character and used to beat her and as such he poured kerosene on her person and set her on fire. This fact does not appear to have been mentioned in exh. 39 recorded by the Special Executive Magistrate.

6. The presence of accused at the time of incident is duly proved and has not been denied. PW 2 Arunabai is the land lady who was present at the residence at the relevant time. The land lady resides in the same house which consists of total six rooms out of which three rooms were given on rent. Accused and his wife used to reside in one room which is part of the same house. It is stated by PW 2 in her deposition that at about 8.00 pm she was in the house and heard voice of deceased 'save save' from her room and thereafter she rushed to the room however, the entry door was closed. The door was opened by the accused and it was noticed by the witness that deceased had sustained burn injuries on her face

etc. Witness further states that she went to the house of parents of the deceased who reside nearby and informed them about the incident. On their arrival they took deceased to the hospital. Although there appears to be some inconsistency in respect of time of occurrence and as to whether PW 2 took her to the hospital, they are of minor nature which according to us, are not sufficient to persuade us to disbelieve prosecution version. As has been stated above, the substratum of prosecution allegations that it is the accused who poured kerosene on the person of the deceased and set her on fire is consistent in both the dying declarations of deceased Sonabai. Deceased alongwith accused were present at the house at the relevant time, has also been deposed by PW 2 Arunabai. PW 3 Vinod who is the nephew of deceased has been examined by prosecution. PW 3 stated in his deposition that deceased Sonabai was his maternal aunt and accused is his maternal uncle.

It is stated by the witness that at about 9.30 pm while he and his parents were taking meal, land lady of deceased came and informed that deceased has sustained burn injuries. Witness alongwith his uncle Sheshrao reached the house of accused and noticed that deceased had sustained burn injuries on chest, both hands etc. On making enquiry, deceased told him that accused was demanding money for consumption of liquor and was suspecting her character and as such, poured kerosene on her person and set her on fire. Deceased was taken to the hospital by witness Vinod and his uncle Sheshrao. He further deposed that when he reached residence of the deceased her son Amol was also there. There is little to disbelieve the version of the witness who has immediately spoken with the deceased after occurrence of the incident. Oral dying declaration given to PW 3 Vinod is consistent with the theory of prosecution as has been set out in dying declarations exh. 22 and 39. PW 4 Amol, son of accused, has been examined by prosecution. The witness was aged about 7 to 8 years at the time of incident. Learned Sessions Judge has observed that the witness does not understand the sanctity of oath and as such oath was not administered to the witness. The child witness has deposed conflicting versions in respect of the incident. Although in the examination-in-chief he accuses his father as the person who has poured kerosene on the person of his mother and set her on fire, however, in the cross examination the witness has stated that his mother was cooking meal and at that

time the stove got burst and she sustained burn injuries.

In re-examination again the witness has reverted back to the statement as stated by him in the examination-in-chief and made allegations against his father. It is recorded by learned Sessions Judge, after observing the demeanor of the witness that the child witness is not believable. We do not find any reason to controvert the observations of the learned Sessions Judge. The evidence lead by prosecution which mainly consists of two dying declarations at exh. 22 and 39 coupled with the version of Arunabai PW 2 in respect of presence of the accused at the spot of occurrence and the oral dying declaration of deceased given to PW 3 Vinod, is sufficient to hold accused guilty. The defence raised by accused is not acceptable since there are no circumstances appearing in the prosecution version which supports the defence of accused that as a result of bursting of stove there was fire which resulted in sustainance of burn injuries by deceased and her consequential death.

7. Although there are certain minor inconsistencies in two dying declarations recorded by police Head Constable Ashok and the Special Executive Magistrate Mahesh, they are not of such a nature which compel us to dis-believe the version stated by deceased in its totality. In cases wherein multiple dying declarations are recorded, if acceptance of one version necessarily leads to rejection of the version stated in other dying declarations, then only the evidence in the form of multiple dying declarations need to be discarded. In the instant matter, the substratum of prosecution version that it is the accused who poured kerosene on the person of deceased and set her on fire is consistent and, acceptance of one of the dying declarations does not lead to negation of the other version. The dying declaration is to pass the test of reliability. In our opinion, both the dying declarations are reliable inspite of their being minor inconsistencies. Apart from the version as stated in the dying declaration, presence of accused at the spot of occurrence at the relevant time is not disputable and has been proved. Accused has also not denied his presence at the time of occurrence of the incident. In these circumstances, the burden is heavy on the accused to explain the circumstances leading to the death of deceased and, according to us, the defence raised by accused is not reliable. In the matter of Kushal Rao Vs. State of Bombay, reported

in AIR 1958 SC 22, the Supreme Court has observed thus :

"In order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But, once, the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration."

"If, on the other hand, the Court, after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then without corroboration, it cannot form the basis of a conviction."

There is neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. Primary effort of the Court is to find out, whether the dying declaration is true. If it is true, no question of corroboration arises. It is the duty of the Court to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination.

8. The Full Bench of this Court in the matter of Ramesh Gyaoba Kamble Vs. State of Maharashtra reported in 2011(4) Bom.C.R. (Cri.) 42, has observed thus :

"19.4 In State of Uttar Pradesh Vs. Ramsagar Yadav, 1985 DGLS (soft) 13 : 1985 DGLS(Cri) soft 709 : A.I.R. 1985 S.C. 416 the Supreme Court observed that it is well settled as a matter of law, that a dying declaration can be acted upon without corroboration. There is not even Rule of prudence which has hardened into a Rule of Law that a dying declaration cannot be acted upon unless it is corroborated. The primary effort of the Court is to find out whether the dying declaration is true, if it is, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear or convincing that the Court may, for its assurance, look for corroboration to the dying declaration."

"19.9 In *Laxmi Vs. Om Prakash*, 2001 DGLS (soft) 845 : 2001 DGLS(Cri.) soft 269 : A.I.R. 2001 S.C.W. 2481, the Supreme Court held thus :

"A dying declaration, if found reliable, can form the basis of conviction. A Court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. A dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in the light of the surrounding circumstances and its weight determined by reference to the principles governing the weighing of evidence. It is, as if the maker of the dying declaration was present in the Court, making a statement, stating the facts contained in the declaration, with the difference that the declaration is not a statement on oath and the maker thereof cannot be subjected to cross-examination."

9. It is thus settled law that on careful scrutiny of the dying declaration if the Court is satisfied that the same is free from any infirmity and is reliable and can be acted upon, it may form basis of conviction even if there is no corroboration. Confidence of the Court is *summum bonum* and in the event of there being any affirmation thereto in the judicial mind, question of any disbelief or distrust would not arise. In the event however of there being some infirmity, howsoever negligible it be, the Court unless otherwise satisfied about the credibility thereof, ought to look for some corroboration.

10. In the instant matter, according to us, the version stated by deceased in both the dying declarations in respect of complicity of accused in the alleged crime does appear to be acceptable. As has been stated above, the presence of accused alongwith company of accused at the relevant time in the room cannot be ruled out. The version stated in the dying declarations is corroborated by oral statement made by deceased to her nephew Vinod who visited her immediately after occurrence of the incident. The discrepancies pointed out by defence in the dying declarations at exh. 22 and 39 are of minor nature and do not persuade us to dis-believe the substratum of the version of prosecution as regards complicity of accused in the crime. We are of the considered view that evidence put on record by prosecution inspires confidence for holding accused guilty beyond reasonable

doubt.

11. In view of above, the appeal deserves to be dismissed and the same is accordingly dismissed.

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