
Ravindra Premdas Dhoke Vs The State of Maharashtra

Criminal Appeal No. 920 of 2005

Court: Bombay High Court

Date of Decision: Feb. 22, 2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 313, 428#Penal Code, 1860 (IPC) " Section 302, 304(I), 307, 34, 504

Citation: (2012) BomCR(Cri) 501

Hon'ble Judges: Shrihari P. Davare, J; A.P. Lavande, J

Bench: Division Bench

Advocate: A.Z. Mookhtiar, in Cri. Appeal No. 920/05 and Mr. A.K. Molly, in Cri. Appeal No. 930/05, M.M. Deshmukh, APP for State, for the Appellant;

Judgement

A.P. Lavande, J.

Both these appeals are being disposed of by common judgment since in both these appeals the challenge is to the

judgment and order dated 27th April, 2005 passed by Addl. Sessions Judge, Palghar at Thane in Sessions Case No. 149 of 2003 convicting the

appellants-accused for the offence punishable u/s 302 r/w 34 of IPC. By the impugned judgment and order the appellants have been sentenced to

suffer imprisonment for life and to pay fine of Rs. 500/- each and in default to suffer RI for 15 days. The appellants-accused have been acquitted

for the offences punishable under Sections 504 and 510 of IPC.

2. The appellant in Criminal Appeal No. 920 of 2005 was accused No. 1 and the appellant in Criminal Appeal No. 930 of 2005 was accused

No. 2 in Sessions Case No. 149 of 2003 and they would be referred to as per their status before the trial court.

3. Briefly, the prosecution case is as under:

Deceased Purnabai Ravindra Dhok was second wife of accused No. 1 and accused No. 2 is the first wife of accused No. 1. Deceased and both

the accused used to reside in Ambedkar Nagar, Achola Village, Nalasopara (E) Taluka Vasai.

On 17/1/2003 deceased Purnabai left house for work at 6.00 a.m. and returned back at about 3.00 p.m. Accused No. 1 returned home at about

7 p.m. in drunken condition. At about 9 p.m., accused No. 1 abused her, whereupon she asked him as to why he was abusing her. There was an

altercation between them. At that time accused No. 2 caught hold of Purnabai and accused No. 1 poured kerosene on her from plastic cane and

with a matchstick set her ablaze. Purnabai received 100% burn injuries. The deceased was taken to Vasai Nagar Parishad hospital for treatment

by Accused No. 1. Thereafter Purnabai was taken and admitted in Bhagwati Hospital at Borivali (West) Mumbai, for further treatment on

18/1/2003.

4. PW 3 Devidas Appa Pagare, as per the orders of Police Inspector went to the hospital for recording dying declaration of Purnabai. He

recorded her dying declaration (Exh.-33) in the presence of Special Executive Magistrate PW 4 Shri Dhananjay Chandrashekhar Junnarkar, Bilkis

Begum, a Member of Mahila Dakshata Samiti and the Medical Officer attached to Bhagwati hospital. On the basis of dying declaration Crime No.

114 of 2003 under Sections 307, 510 and 504 r/w 34 of IPC was registered at Nalasopara Police Station against both the accused. The accused

were arrested on 18/1/2003. Purnabai died in the hospital on 23/1/2003. Thereafter offence u/s 302 was added.

5. Pursuant to the FIR lodged by PW 1 Jagannath Maruti Shelar, Yamgarsaheb PSI attached to Nalasopara Police Station carried out

investigation. He visited the house and carried out spot panchnama and attached half burnt clothes of the injured and the accused. The statement of

several witnesses were recorded in the course of investigation. After Purnabai expired on account of burn injuries, postmortem was conducted on

her dead body by PW 7 Dr. Vitthal Vihurkar, who submitted postmortem report Exh.-47.

6. After completion of the investigation charge-sheet was filed against both the accused under Sections 302, 510 and 504 read with 34 IPC in the

court of JMFC Vasai.

7. Since the offence u/s 302 of IPC is exclusively triable by Court of Session, the case was committed to the Court of Sessions, Palghar at Thane.

8. In Sessions Case No. 149 of 2003, the prosecution examined seven witnesses and produced several documents to prove the charges against

both the accused. The defence of the accused was of total denial. In the court of trial, it was also suggested that the deceased had burnt herself.

After the statement of the accused u/s 313 of Cr. P.C. was recorded, the accused did not lead any defence evidence. Upon appreciation of the

evidence led by the prosecution, the trial court held both the accused guilty for the offence punishable u/s 302 r/w 34 of IPC and acquitted them of

the offences punishable u/s 504 and 510 r/w 34 IPC.

9. Mr. Mookhtiar, learned counsel appearing for accused No. 1 submitted that the evidence led by the prosecution is not sufficient to convict

accused No. 1 for the offence punishable u/s 302 r/w 34 IPC. Learned counsel further submitted that the seizure punchnama does not show

presence of kerosene on clothes of the deceased and as such no implicit reliance can be placed on the dying declaration recorded by PW 3

Devidas Pagare. Learned counsel further submitted that the clothes seized from the spot were not sent for analysis and this is a serious lacunae in

the investigation of the crime, the benefit of which should go to both the accused. Learned counsel further submitted that the doctor who had

examined the deceased before recording dying declaration has not been examined and there is absolutely no evidence as to what treatment was

given to the deceased during the period she was in the hospital.

10. Learned counsel further submitted that PW 2 Krushna Dattatray Chaudhari, who carried the deceased to the hospital, does not even make

reference to smell of kerosene and this creates serious doubt in the prosecution case. Learned counsel further submitted that the prosecution has

not led any evidence to establish that deceased Purnabai was staying along with both the accused. Learned counsel further submitted that the

conduct of the accused No. 1 clearly establishes his innocence and, therefore, the impugned judgment and order of conviction is liable to be set a

side.

11. Mr. Molly, learned counsel appearing for accused No. 2 adopted the submissions made by Mr. Mookhtiyar and further submitted that the

dying declaration Exh.-33 does not inspire confidence and as such accused No. 2 is liable to be acquitted of the offence for which she has been

convicted and sentenced.

12. Per contra Mrs. Deshmukh, learned APP for the respondent submitted that the dying declaration recorded by PW 3 Devidas Pagare inspires

confidence and since the same is truthful and voluntary and not shaken in cross-examination of PW 3 and PW 4, the conviction recorded by the

trial court cannot be faulted. Learned APP further submitted that conviction can even be based solely on the basis of the dying declaration without

corroboration. Learned APP placed reliance upon the judgment of Division Bench of this court in the case of Baburao @ Babulal Raibhan Patole

(Jadhav v. The Government of Maharashtra, 2011 ALL MR (Cri) 2614. Learned APP submitted that no interference is warranted with the

impugned judgment and order.

13. We have carefully considered the rival submissions, perused the record and the judgment relied upon by learned APP.

14. There is no serious dispute that the death of deceased Purnabai was on account of 100% burn injuries. PW 7 Dr. Vitthal Vihurkar, who had

conducted postmortem on the dead body of Purnabai on 23/1/2007 deposed that he noticed 100% superficial to deep burns on the dead body of

Purnabai; there were surgical wounds on both limbs medially above ankle joint. He further deposed that all these burn injuries were antemortem.

On internal examination, all the vital organs of the body were congested and edematous. He opined that the cause of death was on account of

100% burn shock and, therefore, the death was unnatural. He produced postmortem report Exh.-47 and identified his handwriting. He further

stated that the burn injuries were sufficient to cause death of the patient.

15. Except for a bare suggestion that the witness had not conducted postmortem examination, nothing tangible has been brought on record to

discredit the testimony of this witness.

16. The evidence of PW 7 Dr. Vitthal Vihurkar which has not been shaken in cross-examination clearly proves that deceased Purnabai died on

account of 100% burn injuries. It is also to be noted that it is the case of accused No. 1 himself that deceased Purnabai had burnt herself.

17. The question, therefore, which arises for consideration is whether death of Purnabai was suicidal or homicidal.

18. In order to prove the complicity of the accused in the commission of crime, the prosecution has relied upon the dying declaration Exh.-33

which was recorded by PW 3 Devidas Pagare in the presence PW 4 Dhananjay Junnarkar, the Special Executive Magistrate. PW 3 Devidas

Pagare, who was Hawaldar at the relevant time deposed that in the year 2003 he was attached to Nalasopara Police Station. On 18/1/2003,

information was received by PSO from Bhagwati Hospital at Borivali, on phone that one Purnabai was admitted for treatment for burns. He was

ordered by PSO to go to the hospital and record the statement of Purnabai. He produced order dated 18/1/2003 Exh.-32 of PSO and identified

signature of PSO Mr. M.A. Sankhe. He further deposed that he went to Bhagwati Hospital where Bilkis Begum, Member of Mahila Dakshata

Samita and Special Executive Magistrate of Borivali were present there. All of them went to Ward No. 4 of the hospital. Purnabai Ravindra Dhok

was on the coat. He requested the medical officer to ascertain whether the patient was in a position to give statement. The doctor opined that she

was in a fit condition to give statement. Thereafter he questioned Purnabai and recorded her statement and, thereafter read over the statement to

her. Purnabai confirmed that what was written was true. He thereafter obtained thumb impression mark on the statement in the presence of Bilkis

Begum and the Special Executive Magistrate. He also himself signed on the statement. The medical officer also certified on the statement and also

put his signature and seal below the signature. He identified his own signature, signature of Bilkis Begum and Special Executive Magistrate and also

of the medical officer on the statement Exh.-33. He further deposed that on the basis of the statement he lodged report Exh.-34. He also identified

his signature on the report, which was lodged at Nalasopara Police Station. In the cross-examination he denied that he had recorded the statement

of Purnabai as per the information given by Bilkis Begum. He also denied that thumb impression of Purnabai was not obtained on the statement.

He also admitted that Purnabai was having burns all over the body but denied the suggestion that she was not in a position to make any statement

before him. He denied that he was giving false deposition before the court.

19. PW 4 Dhananjay Junnarkar deposed that he was Special Executive Magistrate for last five years. He was called in Bhagwati Hospital by

police on 18/1/2003. Upon the statement (Exh.-33) of Purnabai being shown to him, he stated that the same was recorded in his presence in

Bhagwati Hospital at Borivali by policeman from Nalasopara Police Station. He further deposed that he alongwith medical officer and one Muslim

lady were present and that medical officer had written his endorsement and signed the same after affixing the seal. He further deposed that thumb

impression of Purnabai was taken on the statement. He also confirmed that he had also signed the statement after affixing seal of Special Executive

Magistrate of Borivali. He identified his signature and seal on the statement Exh.-33.

20. In the cross-examination he admitted that the patient was totally burnt but he stated that he did not remember if saline was administered to

Purnabai at that time. He admitted that patient was in serious condition. He further stated that he was present in hospital for about 30 to 35 minutes

and during that period the statement of Purnabai was recorded. He admitted that police officer was asking questions to Purnabai and she was

answering those questions. He denied that statement of Purnabai was already recorded and he just signed on the same or that he was deposing

falsely before the court.

21. Upon a close scrutiny of the evidence of the above referred two witnesses and the dying declaration Exh.-33, we find that the accused have

not been able to discredit the dying declaration of deceased Purnabai, recorded by PW 3 Devidas Pagare. The evidence of PW 3 Devidas Pagare

stands corroborated on material aspects by the testimony of PW 4 Dhananjay Junnarkar, the Special Executive Magistrate and also the dying

declaration Exh.-33. No doubt PW 4 Dhananjay Jannarkar being the Special Executive Magistrate ought to have himself recorded the dying

declaration instead of PW 3 Devidas Pagare but this fact by itself would not be sufficient to jettison the cogent evidence led by the prosecution of

the two witnesses which stands corroborated by the documentary evidence i.e. the dying declaration Exh.-33.

22. Perusal of the dying declaration discloses that deceased Purnabai claimed that on 17/1/2003 at about 7 p.m., accused No. 1, who had come

home drunk had an altercation with her at about 9 p.m., and thereafter accused No. 1 poured kerosene on her and, thereafter set her ablaze with a

matchstick. The dying declaration also discloses that accused No. 2 had caught the deceased Purnabai in order to facilitate accused No. 1 to pour

kerosene on Purnabai and set her ablaze. The dying declaration also discloses that thereafter it was accused No. 1, who took Purnabai in a car to

Vasai Nagarparishad Hospital. The dying declaration Exh.-33 inspires confidence and there is absolutely no reason to disbelieve the version of

deceased Purnabai as recorded in the dying declaration.

23. Insofar as the evidence of PW 4 Dhananjay Jannarkar, the Special Executive Magistrate is concerned, we do not find any ground to reject his

testimony inasmuch as nothing has been brought on record to establish that he had an axe to grind against the accused. We have, therefore, no

hesitation to place implicit reliance on the dying declaration Exh.-33 which has been duly proved by PW 3 Devidas Pagare and is corroborated by

the evidence by PW 4 Dhananjay Jannarkar.

24. The evidence of PW 6 Dr. Hemangi Kocharekar establishes that she had examined accused No. 1 on 24/1/2003 at the request of Nalasopara

Police Station and she had issued certificate Exh.-45. Her evidence further establishes that accused No. 1 had found wound on his right forearm.

Thus the evidence of PW 6 Dr. Hemangi Suryakant Kocharekar also lends corroboration to the dying declaration which establishes the complicity

of both the accused in setting the deceased ablaze.

25. In our considered opinion, the prosecution has been able to establish that accused No. 1 had poured kerosene on the deceased Purnabai and

set her ablaze with the help of matchstick and at that time accused No. 2 had caught hold of deceased Purnabai.

26. The next question which arises for consideration is as to what offence is made out against both the accused. The dying declaration Exh.-33

itself suggests that at about 7 p.m. on 17/1/2003 accused No. 1 had come home drunk and at about 9 p.m. had an altercation with deceased

Purnabai and thereafter he set her ablaze after pouring kerosene. We, therefore, find it difficult to hold that accused No. 1 had intended to cause

death of Purnabai.

27. The prosecution evidence itself suggests that accused No. 1, who was drunk, after having altercation with deceased Purnabai, set her ablaze

after pouring kerosene on her. There is absolutely no motive attributed to accused No. 1 or accused No. 2 for committing the crime and it appears

that the incident occurred since accused No. 1 was drunk and had an altercation with the deceased. Therefore, in our considered opinion, the

offence u/s 304(I) and not 302 of IPC is made out against the accused No. 1.

28. Accused Nos. 1 and 2 are, therefore, liable to be convicted for the offence punishable u/s 304 (I) r/w 34 IPC.

29. The prosecution has relied upon the evidence of PW 2 Krushna Chaudhary, who deposed that he knew both the accused. On 17/1/2003 he

was residing near Vithoba Mandir, Acholegaon, Taluka Vasai and he was driving his rickshaw. He was called to his house where his mother was

present. He saw one women in burnt condition in the room which was adjacent. That women was taken in the rickshaw for medical treatment. He

further deposed that accused No. 1 informed him that Purnabai was burnt and died. He further claimed that accused No. 1 had told him that he

himself and Purnabai had a quarrel and accused No. 1 had poured kerosene on her body and set herself ablaze and she died. He further claimed

that Purnabai was taken to Bhagwati Hospital for further medical treatment.

30. From the record it appears that the examination-in-chief of this witness was recorded by the learned Judge himself in the absence of APP and,

therefore, no leave was sought to cross-examine his witness, who had deposed contrary to his police statement.

31. In our considered opinion, learned Judge ought not to have recorded the evidence of this witness, who was an important witness and had

turned hostile in the absence of Assistant Public Prosecutor. We, therefore, do not propose to place reliance on his testimony which does not

inspire confidence and accept the evidence of PW 3 Devidas Pagare and PW 4 Dhananjay Jannarkar, which inspires confidence.

32. Insofar as the submissions made by learned counsel on behalf of the accused are concerned, in our considered opinion, in view of the cogent

evidence led by the prosecution, PW 3 and PW 4, we find it difficult to accept the same. No doubt, the panchama pursuant to which clothes of the

deceased were seized from the spot, does not show the presence of kerosene nor the clothes were sent for analysis but these facts by themselves

are not sufficient not to accept the dying declaration Exh.-33. No doubt, there are lapses on the part of the investigating agency in carrying out

proper investigation but it is now well settled that lapses on the part of investigating officer do not advance the case of the accused and the

evidence led by the prosecution has to be tested on its own merits.

33. Insofar as the non-examination of the doctor, who had certified that the deceased Purnabai was fit to give statement is concerned, in our

considered opinion, the same is not fatal to the prosecution case, in view of the cogent evidence of PW 3 Devidas Pagare that the doctor had

certified that patient was fit to give statement.

34. In the case of Baburao @ Babulal Patole (Jadhav) (supra), relied upon by learned APP, the Division Bench of this court has held that

conviction can be based on the basis of dying declaration even without corroboration provided same is truthful and inspires confidence.

35. In view of the above discussion, the following order is passed:

The appeal is partly allowed. The conviction of the appellants/accused for the offence punishable u/s 302 r/w 34 IPC and the sentences imposed

on them are quashed and set aside and both the appellants/accused are convicted for the offence punishable u/s 304(I) r/w 34 of IPC and each of

them is sentenced to undergo R.I. For 10 years and to pay fine of Rs. 1000/- and in default to undergo R.I. For 3 months.

Both the accused are entitled to set off the period of detention in terms of Section 428 of Cr. P.C.

The order passed by the learned trial Court insofar as disposal of property is concerned is maintained.

The fees of Mr. Mookhtiar Advocate for appellant in Cri. Appeal No. 920 of 2009 and Mr. Molly, Advocate for appellant in Cri. Appeal No.

930 of 2009, who have been appointed by Legal Aid Committee, are quantified at Rs. 2,500/- (Rupees Two thousand five hundred) each.

Both the Appeals stand disposed of in the aforestated terms.