

Lallubhai Devchand Shah and Others

Vs

The State of Gujarat

Criminal Appeal No. 71 of 1970

(A.N. Ray, D.G. Palekar JJ)

03.11.1971

JUDGMENT

PALEKAR, J. -

1. The appellants (1) Lallubhai Devchand Shah (2) Jayantilal Lallubhai and (3) Bai Nathi were convicted by the learned Additional Sessions Judge, Ahmedabad, of the offence under Section 302, I.P.C. and sentenced to suffer imprisonment for life. The Gujarat High Court confirmed the conviction and sentence in appeal. The present appeal has been filed by special leave.

2. Lallubhai is the father of Jayantilal and Bai Nathi is his wife. Together they lived in a house near the Jain Temple in village Poshina in Idar Taluka, District Sabarkantha. The village is a small village with a population of about 1,500. At the relevant time, the deceased Bai Sharda was about 22 years old and was also living with them. Sharda had been married to another son of Lallubhai named Amritlal in about 1962-63. She was the daughter of one Kachralal Kevaldas P.W. 10 was lived in another village named Mau which is about 7 or 8 miles from Poshina. Her husband Amritlal had been living in Bombay to earn his livelihood since before his marriage. Though Sharda was betrothed to Amritlal for many years before the marriage, the marriage seems to have been a failure because Amritlal did not show any affection for her. He used to come from Bombay to Poshina once in six months or a year for a stay of one or two days and did not think of taking her to Bombay. He did not also visit his father-in-law's house at Mau. In or about 1964-65, Amritlal started giving tuition to one girl named Aruna in Bombay and in course of time formed an attachment for her. In 1967, they decided to marry but as Amritlal's wife was living, they converted themselves to Islam and thus overcame the obstacle to marriage. Thereafter Amritlal and Aruna married on November 16, 1967, at Bombay and lived together as husband and wife. Aruna's brother thereafter filed a complaint at Bombay against Amritlal, but by about the first week of April, 1968, Aruna's relations were won over and nothing happened in the criminal case. The action of Amritlal seems to have met with the approval of his parents which we know from a letter written by Amritlal on April 8, 1968, Ext. 24. The letter has specifically referred to the criminal complaint against him and informed the family members about the changed attitude of Aruna's relations. It is in evidence that Aruna also used to write letters to the members of her husband's family. The same letter further shows Amritlal's general attitude towards his first wife Sharda. Sharda was living at that time with the accused having returned from her father's house a few months earlier. During all these six years of the marriage, Sharda lived sometimes with her father and sometimes with the accused. The letter reveals that Amritlal hated Sharda because he tells his father that if the matter were left to him, he would not have allowed Sharda to come to the house, let alone allow her to enter the kitchen. With a touch of sarcasm, he compliments his parents for giving shelter to Sharda due to social pressure. In short, Sharda had been abandoned by her husband Amritlal.

3. At about 10.00 a.m. on April 18, 1968, i.e., about a week after the letter Ext. 24 was received by the accused, there was a quarrel between the mother-in-law Nathi Bai and Sharda. We do not know the nature of the quarrel. But it was not a serious one. One of the witnesses Bhudarlal P.W. 5 described it as the usual quarrel which takes place in many houses P.W. 5 described it as the usual quarrel which takes place in many houses which are joint. That witness and P.W. 8 Bai Tara who came there on hearing the quarrel advised them not to quarrel and the matter ended there. At about 1.00 p.m. neighbours heard cries and shrieks from the house of the accused and ran to the place. They saw a ghastly sight there. In the hind-most room which is also described as the second room in the judgment of the High Court, Sharda had fallen on the ground naked with burns all over her body. She was in great pain but perfectly conscious. The neighbours who came there asked her what had happened and she told them that the three accused had sprinkled kerosene on her clothes and set them on fire. A large crowd had collected and one of them was Amritlal Manga Lal, P.W. 1. Amritlal was a relation. He was related to Lallubhai, accused No. 1, as his brother's son and he was also related to Sharda who was the daughter of the maternal uncle of Amritlal's wife. On hearing what the girl had stated within their hearing, the Sarpanch of the village, Dharam Chand, P.W. 3, prepared statement Ext. 10 and the same was signed by about 14 persons including P.W. 1 Amritlal. Neither the signature nor the thumb-impression of Sharda could be taken below the writing because that was not possible as the palms of her hands were burnt. After signing the writing, Amritlal and some others left the village to fetch a Doctor and to inform the Police. Amritlal obtained a Jeep and went to the Police Outpost at Chitroda which is two miles away. Some other persons went to the Medical Officer, Dr. Keshavalal, whose head-quarters were also at Chitroda. Head Constable Samat Singh P.W. 19 was in charge of the Police Outpost. On a statement made by Amritlal to him, he prepared an occurrence report Ext. 9 to the effect that the three accused had, after beating Bai Sharda, sprinkled kerosene on her body and set fire to her clothes. The occurrence report was signed by P.W. 1 Amritlal who was instructed by the Head Constable to proceed to the Police Station at Jadar which was about 10/12 miles away. The Head constable thereafter proceeded to village Poshina.

4. In the meantime Dr. Keshavlal, P.W. 15, having learnt that Bai Sharda had received burns, came to Poshina in a Jeep. He reached the house of the accused at about 4.15 p.m. He directly went to the place where Sharda was lying. On seeing the Doctor, Sharda implored him loudly 'Save me, Save me'. He noticed that her body had been extensively burnt and the case was very serious. He casually asked her as to how she got burnt. Thereupon she told him that she was burnt by her father-in-law Lallubhai, mother-in-law Bai Nathi and brother-in-law Jayantilal after sprinkling kerosene on her. He carried out whatever medical examination was possible and since the case was serious he recommended that she be taken to the Civil Hospital at Himatnagar. By this time, Head Constable Samat Singh had also arrived at that place. He also noticed that Sharda had extensive burns on her body and she was quite conscious and able to speak. He asked her what had happened and, according to the witness, she told him that her husband had contracted a second marriage and that her father-in-law, mother-in-law and brother-in-law had burnt her after sprinkling kerosene on her. At the instance of the Medical Officer, Dr. Keshavlal, he then took Sharda to the Civil Hospital round about 6.00 p.m. Dr. Pandya P.W. 11 examined Sharda at about 6.20 p.m. Her condition at that time was very bad. She was speaking in a very low voice and it was not possible to follow her. He started giving treatment to her and intimated the Police Station at Himatnagar to arrange for recording her dying declaration. Before the police could arrive, Sharda expired at 6.35 p.m. In due course Dr. Pandya performed the post-mortem examination. The results noticed by him were as follows :

"Pieces of clothes stuck to the body and black threads tying the hairs of the head

were collected at the post-mortem examination. Smell of kerosene was found. Body had blisters which had burst and from head to legs she was blackened. The hair on the head were partially burnt. Face, legs, eyes, cheek, shoulders, chest, abdomen, neck, back of chest, both thighs, and buttocks, lower part of the abdomen and genitals, both knees and calves of legs were burnt and found black. Both the palms with fingers had also burns and blisters. All these injuries were found to be ante-mortem."

According to Dr. Pandya the burns were so extensive that they were sufficient in the ordinary course of nature to cause death.

5. The principal evidence against the accused consisted of the dying declarations made by Sharda from time to time. First there was the dying declaration recorded as per Ext. 10 by the Sarpanch Dharam Chand, P.W. 3. It was signed by no less than 14 persons who had come to the place immediately after hearing Sharda's cries. The second time when Sharda made the statement was when Dr. Keshavlal questioned her. He had prepared rough notes at the time which he later transferred to the case papers Ext. 38, prepared the same day. Ex. 38 records the statement made by her to the effect that Sharda's father-in-law, mother-in-law and brother-in-law had sprinkled kerosene on her and "set on fire". The third dying declaration is to be found in the statement of the Head Constable Samat Singh, P.W. 19, who says that when he asked Sharda as to what had happened, she told him that her husband had contracted a second marriage and her mother-in-law, Bai Nathi, father-in-law Lallubhai and brother-in-law Jayantilal had burnt her after sprinkling kerosene on her. The second and the third declarations have been proved by Dr. Keshavlal and Head Constable Samat Singh respectively and Dr. Keshavlal produced Ext. 38 - the case papers, in corroboration of his evidence. With regard to the first dying declaration Ext. 10 which was prepared by the neighbours who had come to the house on hearing the cries, no less than six persons out of the 14 persons who were signatories to the statement, were examined. Most of them deliberately avoided supporting the prosecution. P.W. 1, Amritlal who had signed the statement and had also made his report at the Outpost in accordance with that statement, turned hostile and denied having heard the dying declaration or even having made the report Ext. 9 which he had signed. Sarpanch Dharam Chand, P.W. 3, though admitting that he had recorded the statement and signed it along with the others gave a twist in the course of evidence suggesting thereby that he had prepared the report on what the ladies surrounding Sharda had told him. In these circumstances, the learned Sessions Judge held that Ext. 10 was inadmissible in evidence. At the same time he held that the first dying declaration had been duly proved by P.W. 4 Ravashanker who did not disclose any disposition to turn hostile. Ravashanker stated that when he was returning home at about 1.00 p.m., he heard a noise at the house at the house of the accused and so he went there. There are many persons including the females and the Sarpanch. Sharda was lying in the second room. The females were questioning Sharda and within his hearing Sharda said that she had been burnt by the accused. The Sarpanch prepared Ext. 10 and he also signed it, though in his cross-examination he admitted that he had not read it before signing because it was prepared on the basis of what they had heard from Sharda. The learned Sessions Judge found that this witness was a thoroughly independent and reliable witness and he had no difficulty in holding that Sharda had made a statement soon after she was burnt implicating the accused as the persons who had burnt her after sprinkling kerosene on her body.

6. Apart from denying that they had set fire to the clothes of Sharda and pleading not guilty, no consistent defence was put forward by the accused.

7. The burning could have been either homicidal or accidental. Accident was ruled out by the fact that even at the time of the post-mortem, there was smell of kerosene and there was no possibility of Sharda being burnt by accidentally catching fire in the second room because the kitchen was far from the place and the room was used merely as a store room. Accident was not also suggested before us. There can be, therefore, no doubt that death was homicidal. The High Court has further noticed that in the Sessions Court it did not appear to have been suggested that death was suicidal, but the argument was advanced in the High Court that it was quite likely that Sharda might have committed suicide by sprinkling kerosene on her clothes and setting fire to herself - the reason being that she had been discarded by her husband, she was issueless and she had nothing to look forward in her life, her husband having married a second time.

8. Both the courts have accepted the truthfulness of Sharda's dying declaration and on that basis the High Court has confirmed the conviction of the accused. The law with regard to dying declarations is very clear. A dying declaration must be closely scrutinised as to its truthfulness like any other important piece of evidence in the light of the surrounding facts and circumstances of the case, bearing in mind, on the one hand, that the statement is by a person who has not been examined in court on oath and, on the other hand, that the dying man is normally not likely to implicate innocent persons falsely. See *Khushal Rao v. The State of Bombay*. (1958 SCR 552 : AIR 1958 SC 22 : 1958 SCJ 198.) If the Court is satisfied on a close scrutiny of the dying declaration that it is truthful it is open to the Court to convict the accused on its basis without any independent corroboration. In the present case, we find that on a close scrutiny of the dying declaration both the courts, after a detailed consideration of the evidence, have come to the conclusion that the dying declaration is true. The normal rule so far as this Court is concerned is that when the High Court accepts a piece of evidence as true, this Court does not examine the evidence afresh for itself unless there is substantial error of law or procedure or there is a failure of justice by reason of misapprehension or mistake in reading the evidence or the case involves a question of principle of general importance. See *Brahmin Ishwarlal Manilal v. The state of Gujarat*, (Criminal Appeal No. 120 of 1963, decided on August 10, 1965.) and *Tapinder Singh v. State of Punjab and Another*. (1970(2) SCC 113 : AIR 1970 SC 1566.)

9. Mr. Mehta appearing for the appellants though conceding that it was not open to contend here that Sharda had not made the dying declaration as alleged, submitted that the courts had not found as a fact that Sharda was in a fit mental condition to make the statement. According to Mr. Mehta, though the witnesses stated in the evidence that Sharda was conscious and was able to speak, it did not necessarily mean that she was in a proper mental condition to make a consciously truthful statement and unless clear evidence about her mental state was produced the statement could not be regarded as reliable evidence. In support of his submission, Mr. Mehta relied on an unreported judgment of this Court in *Sucha Singh v. The State of U.P.*, (Criminal Appeal No. 225 of 1967, decided on November 12, 1968.) and specially on the following observation at page 4 of the blue print :

"It would be very unsafe to record a conviction for the offence of murder, relying solely upon a statement recorded as a dying declaration which is not shown to be made by a person in a fit state of mind."

There can be no doubt that when a dying declaration is recorded the person who records the statement must be satisfied that the person who makes the statement is consciously making the statement understanding the implications of the words he uses. The expression 'fit state of mind' used in the case referred to above means no more than that. The facts of that case go to show that

though the dying man Trilok Singh had purported to make a statement implicating Sucha Singh and Mahendra Singh as his assailants, this Court was not prepared, on the evidence, to accept that statement as having been consciously made by Trilok Singh. The evidence showed that Trilok Singh had died a few minutes after his statement had been recorded by Dr. Pant and just before recording the statement of Trilok Singh he had been surrounded by other Sikh Sardars who were speaking to Trilok Singh in Punjabi. The suspicion, therefore, could not be eliminated that Trilok Singh, when he made the statement, was merely transmitting the suggestions made to him by the Sikh Sardars surrounding him and was not making a conscious and voluntary statement of his own. The Court, therefore, blamed Dr. Pant for not questioning Trilok Singh with a view to test whether Trilok Singh was in "fit state of mind" to make the statement. The "fit state of mind" referred to is in relation to the statement that the dying man was making. In other words, what the case suggests is that the person who records a dying declaration must be satisfied that the dying man was making a conscious and voluntary statement with normal understanding, and the responsibility of the Court is greater in holding that it was so made when in fact it is found that the man dies a few minutes afterwards.

10. In the present case there can be hardly any doubt that Sharda was not only conscious and able to speak but also that she was consciously and voluntarily making the statement. It is not the case that she was surrounded at the time when she made the first dying declaration at 1.00 p.m. by her friends and relatives. Her parents and other relations were away and there was nobody in the house who could have made any suggestions to her to make a false statement. The evidence is that throughout she was conscious and was able to speak. Not only at 1.00 p.m. but even between 4.00 and 4.30 p.m. when Dr. Keshavlal and the Head Constable spoke to her she was perfectly conscious and able to speak her mind. As a matter of fact when she saw Dr. Keshavlal coming inside the house, perhaps with the Doctor's bag, she implored him to save her. She said "Save me, Save me". That clearly goes to show that she had perfect understanding and was able to make a rational statement of her own. No suggestion has been made to Dr. Keshavlal that her mental condition was such that she was not able to make a conscious statement. In fact in his cross-examination Dr. Keshavlal says that at that time the temperature of Bai Sharda was 98 F, respiration 19 and pulse 76. There was no restlessness. There was no shock. She was not unconscious. Her voice was not feeble. Her voice was clear. In these circumstances we have no doubt at all that the dying declaration was a conscious statement voluntarily made by Sharda.

11. Mr. Mehta next contended that the accused had really no reason to murder her because in spite of her husband's aversion towards her, the accused were giving her food and shelter and for this even the husband had complimented them in the letter Ext. 24. There is no substance in this argument because if as suggested, the accused were kind and sympathetic towards her because she was a young woman abandoned by her husband, it could be hardly conceived that Sharda would implicate them falsely. On the other hand, we would expect her to be grateful to her parents-in-law who had given her shelter and maintenance though her husband did not like her at all.

12. Mr. Mehta next submitted that it was not unlikely that Sharda committed suicide by pouring kerosene oil upon herself because her husband had abandoned her, she had no issue and there was no future for her. And having decided to commit suicide, it is further suggested, that she had decided to implicate the accused in a revengeful mood. No sufficient material has been placed before the Court to show that this could have been possible. She had been living for the last six years in the village sometimes with her parents and sometimes with her parents-in-law. Her husband had never cared for her. There is no evidence whatsoever that she had previously tried to commit suicide or showed disgust for life. The fact that her husband had turned to another woman could not

have remained unknown to her, the marriage having taken place more than five to six months before the present incident. Undoubtedly she must have been a disappointed woman. But it is not shown what impelled her to commit suicide on that day. She had never enjoyed the love of her husband since the date of her marriage and it could hardly be said that she had any hopes of her husband treating her better whether he married a second time or not. Her disappointment with life, if any, could not have started after her husband married Aruna in 1967. It is quite likely that she was neglected in the house of the accused - that being the fate of most young women who have to live with parents-in-law after being abandoned by their husbands. But that did not prevent her from living with them because it is seen from the evidence that she lived with the accused and her father alternately. No circumstances have been brought on record to show that she was disposed to commit suicide or that the father-in-law or brother-in-law out of the three accused were treating her so harshly that she would think of implicating them also in a vengeful mood. On the other hand, the immediate conduct of the accused tends to negative the possibility of her suicide. When people rushed to the house on hearing her cries, they do not appear to have noticed that anything was being done by the accused which could be regarded as evidence of their sympathy for the girl. The accused were sitting in the verandah quietly. Being in the house they should have been the first to go near the girl when her clothes had caught fire. But the evidence shows that there were no visible signs on the persons of any of the accused to suggest that they helped the girl when her clothes caught fire. No attempt was made by them to call the Doctor or send for relations. On the other hand, when the girl was telling her interrogators that the three accused had poured kerosene on her and set her clothes on fire, the accused did not so much as protest and declare that she had committed suicide and was claiming them unjustly. Reference was made to the fact that some sand was seen at the place when a Panchanama was made next morning. The suggestion was that one or the other accused had thrown sand to extinguish the fire. If the fact the sand had been thrown at the girl to extinguish the fire, the Doctors who examined the body would not have failed to see the sand particles on the body of the girl. There is no cross-examination of the Doctors with a view to elicit from them that there were particles of sand on the naked body of Sharda. Similarly reference was made to a quilt, a small part of which is supposed to have been burnt. The suggestion now is that the quilt had been used to smother the fire. The quilt was, however, actually found in the verandah and, according to the learned Sessions Judge, it was taken there from the other room and not from the room where Sharda had fallen. Ordinarily if that quilt or any other quilt had been used by any one of the accused to smother the fire, some injury would have been caused to the brave man or woman who attempted to cover the burning clothes of the girl with the quilt. Secondly the quilt would have fallen and remained, if not extensively burnt, at the place where the woman was burnt and fell. It is not elicited from any witness, though some of them were hostile to the prosecution and inclined towards the accused, that any quilt was found close to the place where Sharda was lying. We, therefore, find no hesitation in agreeing with the High Court when it observes that this unusual conduct on the part of the accused is more consistent with the prosecution case than with the possibility of suicide. All the points raised before us on facts had been raised before the High Court and they have been satisfactorily discussed and dealt with. We are not shown that there was any misapprehension or misreading of the evidence on the part of the Trial Court or the High Court resulting in failure of justice. Therefore, this is not a fit case for interference in appeal by special leave. The appeal is, therefore, dismissed.

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