

State of Maharashtra

Vs

Mehtabi

Criminal Appeal No. 275 of 1985

(Dr. A S. Anand, M. K. Mukherjee JJ)

22.02.1996

ORDER

1. The cruelty of the mother-in-law has claimed yet another victim. Aziza, the 16-year-old wife of Mansur Khan, son of the respondent, who died of 90% burns she sustained in her matrimonial home within 11/2 months of her marriage. Mansur Khan was earlier married to one Abeda (PW 3) but she had to leave her matrimonial home on account of the ill-treatment and harassment meted out by her husband and mother-in-law, the respondent herein.

2. According to the prosecution case, on 13-5-1977, Mansur Khan had gone to the city for purchase of some grocery articles. The deceased and the respondent were the only two other persons in the house. At about 11.30/12 noon, Lakharam (PW 1), who was then standing in front of the office of the Gram Panchayat, heard shouts from the direction of Mansur Khan's house, which was at a distance of 10 paces from that office and rushed to that house. Reaching there, he found that the clothes of Aziza had caught fire and she was struggling for life. He poured some water to extinguish the fire. Within half an hour, Mansur Khan arrived there. He also poured some water and then took her to the Medical College Hospital, Aurangabad. She was first taken to the Casualty Ward and therefrom the doctor-in-charge sent an information to Constable Botke (PW 10), who was in charge of the police chowki adjacent to the hospital, about the admission of Aziza. Constable Botke made an entry in his daily diary (Ext. 25) and contacted the Cantonment Police Station over telephone. He then rushed to the Casualty Ward and enquired of Aziza as to how she had sustained the burn injuries. Aziza informed him that she had been set on fire by her mother-in-law Mehtabi. PW 10 then conveyed the information to Head Constable Rajput (PW 12) at the police station who also rushed to the hospital after making an entry in the station diary. Dr Iyyer (PW 6) advised PW 12 about the necessity of recording the dying declaration of Aziza. While administering treatment to Aziza, PW 6 recorded the case history as given out by her (Ext. 14). She informed PW 6 that at about 11.30 a.m., while she and the respondent were in the house, and her husband had gone to bring grocery articles, the respondent poured kerosene on her and set her on fire by lighting a matchstick. In the meantime, PW 12 had made efforts to contact the Honorary Magistrate but as he was not available, he (PW 12) came back to the hospital and recorded the statement of the deceased (Ext. 28) after Dr Iyyer had certified that she was mentally fit and conscious to do so. The statement so recorded reads thus :

"I, Aziza, w/o Mansur, age 16, r/o Padegaon, states on enquiry that I am a resident of the above place. Today on 13-5-1977 in the morning at about 11.30 hours, myself and my mother-in-law were in the house. My mother-in-law, on account of usual routine quarrel has poured kerosene on my body and lit matchstick and put it to me. My mother-in-law always had harassed me. Today my husband had gone to the city

for bringing household articles. When I burnt, I do not know who extinguished the clothes on my body and who brought me to the hospital and admitted me there. She always quarreled with me and harassed me. It was her habit."

3. After recording the above statement, PW 12 went back to the police station and recorded the FIR (Ext. 20). He handed over the dying declaration (Ext. 28) to Head Constable Pardeshi who took over the investigation. The Investigating Officer proceeded to the place of occurrence and seized burnt pieces of, the saree, matchbox, two empty bottles smelling of kerosene and burnt hair butts etc. under a panchnama (Ext. 6). Aziza died in the hospital at about 7.05 p.m. the same evening. After inquest on the following day, i.e., on 14-5-1977, the dead body of Aziza was sent for post-mortem examination, which was conducted by Dr Manohar Dhumale. According to the post-mortem report, all the burn injuries were ante-mortem and the cause of death was shock due to extensive burns of 90%. In the postmortem report, it was also recorded that the body was smelling of kerosene. On completion of the investigation, the respondent was sent up for trial.

4. In the absence of any eyewitness to the incident, the prosecution rested its case upon the two dying declarations of Aziza, one recorded by PW 6 in the case history sheet (Ext. 14) and the other by PW 12 in the presence of PW 6 (Ext. 28). The trial court held that the above two dying declarations were properly recorded and that as they were reliable, they could be made the basis for conviction, more so, when the medical evidence fully corroborated them. Accordingly, it convicted the respondent under Section 302 IPC and sentenced her to imprisonment for life. Aggrieved thereby, the respondent filed an appeal in the High Court. While agreeing with the finding of the trial court that the two dying declarations were genuinely recorded, the High Court reversed its other finding that they were reliable. Resultantly, it set aside the conviction and sentence of the respondent and acquitted her. On special leave, the State has questioned the acquittal of the respondent in this appeal.

5. As the concurrent findings of the learned courts below that Exts. 14 and 28 were genuinely and properly recorded dying declarations are based on a proper consideration and appreciation of the evidence adduced during trial, the only question that needs an answer in this appeal is whether the High Court was justified in upsetting the finding of the trial court that those dying declarations were also reliable. Having perused the impugned judgments in the light of the materials on record, we feel no hesitation in answering the question in the negative.

6. Quite contrary to the contents of the dying declaration which clearly indicated that the respondent had poured kerosene and set the deceased on fire, the High Court first observed :

"There is no other evidence on record to hold that the accused mother-in-law of the deceased was present after 10.30 a.m. on May 13, 1977. The accused has stated in her statement under Section 313 of the Code of Criminal Procedure that she left the house at 10.30 a.m. with a tiffin to the ST Depot to give it to her husband and she returned by 5 p.m. when the policemen were already present in the house. In the absence of any evidence whatsoever on record, it must be held that the prosecution has failed to prove the presence of the accused in the house on the fateful day after 10.30 a.m. This is a serious infirmity in the prosecution case which cannot be brushed aside so lightly as that."

7. We are at a loss to understand how the High Court could record a finding that there was no evidence regarding the presence of the accused in the face of the dying declaration which was found

by it to be genuine. When the deceased herself had stated that the accused had poured kerosene on her body and set her on fire - which necessarily proved her presence in the house - the High Court's finding that there was no evidence to prove that the accused was in the house is patently wrong.

8. The other observation made by the High Court to discredit the dying declaration reads as under :

"One more circumstance which requires to be commented upon is that the deceased was married hardly one and a half months before the date of the incident. She was rather reluctant to go to her husband's house. On an assurance given by the husband, she went to the husband's house. Mansur Khan's first wife, Abeda, left the house as evidence shows, because of ill-treatment and was staying with her parents. The deceased could have escaped from the house if really she was tortured by the accused."

9. Needless to say, the above is a clearly erroneous approach and therefore requires no further comment. Indeed, in vain have we searched through the impugned judgment for reasons to discredit the reliability of the two dying declarations after the High Court itself unambiguously recorded a finding that both the dying declarations were genuine documents and that those declarations had been properly recorded. The law being well settled that a dying declaration can be accepted without any corroboration and that the court need not ask for corroboration unless it suffers from any infirmity, it would have been a different matter if the High Court had recorded the impugned order of acquittal on findings that the dying declarations were suspect and that there was no corroboration or assurance of the dying declarations from any other independent evidence. But, as noticed earlier, those were not the reasons given by the High Court to acquit the respondent. In fact, there is nothing on record even by way of a suggestion from the respondent as to why Dr Iyyer (PW 6) or Head Constable Rajput (PW 12), who recorded Ext. 28 in the presence of PW 6, would create false evidence to involve her in a serious crime of murder. Besides, the medical evidence fully supports the dying declarations.

10. On the conclusions as above, we accept this appeal, set aside the judgment of the High Court and restore that of the trial court. The respondent is on bail. Her bail bonds are cancelled. She shall be taken into custody to undergo the remaining period of sentence.