

SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Pravin Mahadeo Gadekar

Crl.A.Nos.2071-2072 of 2008

(Pinaki Chandra Ghose and Uday Umesh Lalit JJ.)

10.04.2015

JUDGMENT

UDAY UMESH LALIT, J.

1. These appeals by Special Leave are directed against the judgment and order dated 7.12.2007 passed by the High Court of Judicature at Bombay, Bench at Nagpur in Crl. Appeal Nos. 255 of 2001 and 306 of 2004.

2. Deceased Sadhana, daughter of PW 5 Narmadabai, was married to respondent Pradip four to five years prior to the date of incident. After marriage, Sadhana was residing with Pradip in the matrimonial home where the other inmates were Parwatabai mother-in-law and respondent Pravin, brother-in-law. After the marriage, Sadhana was subjected to cruelty by Pradip and other in laws and she was constrained to leave her matrimonial home. A report was lodged by Sadhana on the basis of which these three persons were prosecuted. However the dispute was settled and she started co-habiting with Pradip.

3. It is the case of prosecution that in the morning of 6.11.1995, deceased Sadhana suffered burn injuries. Her husband Pradip also suffered burn injuries. Both were rushed to Distt. Hospital, Akola for treatment. One Shelke gave information to police on telephone. PW1 Suryakanta, friend of Sadhana and PW5 Narmadabai, mother of Sadhana visited her separately in the hospital and Sadhana is stated to have disclosed that her husband Pradip poured kerosene on her and kept pallu of her saree on the lighted cooking gas setting her ablaze.

4. In the night intervening 6.11.1995 and 7.11.1995 while Sadhana was undergoing treatment, arrangements were made to record her statement. PW8 Vijay Singh Pawar who was working as Naib Tehsildar, Akola was requested to record her statement. He therefore went to the Distt. Hospital, met PW7 Dr. Vijay Kalne, Medical Officer Distt. Hospital and asked vide Ext.95 whether Sadhana was in a position to make a statement. PW7 Dr. Vijay Kalne examined Sadhana and vide Ext. 92 certified that she was conscious to record Dying Declaration. After such certification PW 8 Vijay Singh Pawar proceeded to record the statement Ext.96 of Sadhana. In response to the question how the incident had occurred she stated inter alia that Pravin had attempted to commit rape on her few days back and when she narrated this to Pradip after he came back, Pradip poured kerosene on her and set her ablaze. At the end of the statement, mark of her right toe was appended vide Ext. 96 as her hands had sustained burn injuries. After conclusion of the statement, endorsement was made by PW7 Dr. Vijay Kalne at 3.25 am vide Ext.93 that the patient was conscious to record the dying declaration.

5. Pursuant to the aforesaid statement, FIR was registered under Sections 498A, 307, 354 read with 34 IPC in city Kotwalli Police Station, Akola against Pradip, Pravin and their mother Parvatabai. In a supplementary statement recorded on 7.11.1995 Sadhana clarified that her brother-in-law Pravin had come to rape her on Monday, that he had molested her but had not committed any rape on her and that upon her raising shouts he had gone away.

6. Her statement under Section 161 Cr.P.C. was recorded by police on 8.11.1995 where she stated that in the night intervening 2.11.1995 and 3.11.1995 Pravin had held her in his arms and outraged her modesty and that when Pradip came back from Nagpur on 5.11.1995, she complained about the incident. She further stated how Pradip set her ablaze on 6.11.1995. Sadhana succumbed to her burn injuries on 10.11.1995 and the offence under Section 302 IPC was registered against the accused. The post-mortem was conducted on the same day by PW6 Dr. Prashant Waichal in the Distt. Hospital at Akola who found second degree burn injuries to the extent of 96% spread over head, neck and face. After investigation police filed charge-sheet against Pradip, Pravin and Parwatabai for offences under Sections 498A, 302 read with 34 IPC. Pravin was additionally charged for offence under Section 354 IPC.

7. The prosecution examined nine witnesses. PW 7 Dr. Vijay Kalne in his deposition stated that the Executive Magistrate had made a request in writing to certify if Sadhana was conscious and fit to give her dying declaration. The witness stated that he examined the patient and found that her pulse and Blood Pressure

were normal, that she was well oriented and was mentally fit. After having so examined he gave a certificate vide Ext. 92. He further stated that after the statement was recorded, he again examined the patient and gave a certificate that she was conscious while the dying declaration was recorded. His later certification was marked as Ext. 93. He further stated that he was present all throughout. PW8 Vijay Singh Pawar stated how he had requested PW 7 Dr. Vijay Kalne to examine Sadhana and that during the entire course of declaration she was completely conscious. He stated that he had faithfully recorded the dying declaration as stated by Sadhana. The trial court by its judgment and order dated 4.0.2001 in Sessions Case No. 113 of 1996 convicted Pradip for the offence punishable under Section 498A and sentenced him to suffer rigorous imprisonment for two years and payment of fine of Rs.500/-, in default whereof to suffer further rigorous imprisonment for six months. He was also convicted under Section 302 IPC and sentenced to life imprisonment and payment of fine of Rs.1,000/-, in default whereof to suffer rigorous imprisonment for two years. Pravin and Parwatabai were acquitted of the offences under Sections 498A and 302 read with 34 IPC. Pravin was, however, convicted for offence under Section 354 IPC and sentenced to suffer rigorous imprisonment for one year and payment of fine of Rs.500/-, in default whereof to suffer further rigorous imprisonment for three months.

8. While holding Pradip guilty under Section 302 IPC, the trial court principally relied upon dying declaration Ext. 96 recorded by the Executive Magistrate i.e. PW 8 Vijay Singh Pawar. It was observed that the dying declaration did not suffer from any infirmity nor were there any circumstances to show that it was not truthful. As regards oral dying declaration as deposed to by PW 1 Suryakanta and PW5 Narmadabai, it was observed that though there were inconsistencies, their depositions completely supported the dying declaration Ext. 96. As regards the burn injuries suffered by Pradip it was observed that while putting saree border on the lighted burner of the cooking gas, the flames might have engulfed Pradip as well.

9. Respondents Pravin and Pradip preferred Crl. Appeals No. 255 of 2001 and 307 of 2004 respectively in the High Court challenging their conviction and sentence. The High Court observed that there were four dying declarations on record. The first being the oral declaration to PW1 Suryakanta, the second being as deposed to by PW5 Narmadabai, the third was Ext. 96 as recorded by the Executive Magistrate and the last was Ext. 98, i.e. her statement as recorded by the police under Section 161 Cr.P.C. which now could be treated as dying declaration. According to PW1 Suryakanta, Sadhana was raped by Pravin while PW5 Narmadabai stated that he had outraged her modesty. At the same time the dying declaration recorded by the

Executive Magistrate stated that there was an attempt to commit rape and the statement recorded by the police again stated that he outraged her modesty. These inconsistencies and difference in conversations referred to in such declarations, according to the High Court made all dying declarations unreliable. It was observed that Pradip had also sustained burn injuries in the same transaction which were not explained at all. It was further observed that the evidence produced by the prosecution was inadequate to bring home the charge under Section 498A of IPC against Pradip. The High Court thus acquitted Respondents Pradip and Pravin of all the charges.

10. Shri A.P. Mayee, learned advocate appearing for the State submitted that in so far as the assertion that said Sadhana was set afire by Pradip who had poured kerosene on her, there was no inconsistency amongst dying declarations. The dying declaration Ext. 96 recorded by PW8 had undoubtedly stated that Pravin had attempted to commit rape on her few days earlier. The statement recorded by the police Ext. 98 and the supplementary statement had put the matter in clear perspective when Sadhana stated that Pravin had come to rape her but had not succeeded and had molested her. Mr. Sanjay Jha, learned advocate appearing for the respondents submitted that a person who had suffered 96% burn injuries would not be in a position to think and speak coherently and as such the dying declarations are completely suspect. He further submitted that such a patient must have been given sedatives, which again would make it impossible to think coherently.

11. We have perused the entire record including the dying declarations. In our view dying declaration Ext. 96 as recorded by the Executive Magistrate is the most crucial document. Said document itself records the appropriate satisfaction and certification by the medical professional namely PW7 Dr. Vijay Kalne before and after recording of the dying declaration. PW7 Dr. Vijay Kalne clearly stated in his deposition that he had examined Sadhana and found her pulse and Blood Pressure normal, that she was well oriented and that she was mentally fit. He further stated that he was all the time present while the statement recorded. In the circumstances the dying declaration Ext. 96 is absolutely reliable. On the point that Pradip had set Sadhana ablaze, there is no inconsistency in any of the dying declarations and they in unison point the finger at him. Even with respect to the role of Pravin the declarations Exts. 96 and 98 are quite consistent. There may be some exaggeration on part of PW 1 Suryakanata and PW 5 Narmadabai, but the supplementary statement of Sadhana dated 7.11.1995 put the matter completely beyond any doubt.

12. The dying declaration Ext.96, in our view is definitely trustworthy. It also stands corroborated on material aspects by other declaration Ext.98. If some exaggeration on part of PW1 Suryakanta and PW5 Narmadabai is eschewed, their oral testimonies also lend full support. Whether Sadhana was able to speak coherently is a matter which stands dealt with by PW7 Dr. Vijay Kalne, and we have no hesitation in placing reliance on dying declaration Ext.96. The High Court was in error in discarding said dying declaration. The view which weighed with the High Court was not even a possible view. We, therefore hold that the charges under Sections 302 and 354 as against Pradip and Pravin respectively stand fully proved. We affirm the acquittal of Pradip with regard to charge under Section 498A of the IPC.

13. In the circumstances we allow these appeals and set aside the judgment and order of acquittal recorded by the High Court. The respondent Pradip is convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.1,000/-. Respondent Pravin is convicted under Section 354 IPC and sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.500/-, in default whereof to suffer further rigorous imprisonment for one month. Both the respondents Pradip and Pravin be taken in custody forthwith to undergo the sentence awarded to them.