SUPREME COURT OF INDIA

Sampat Babso Kale

Vs.

State of Maharashtra

Crl.A.No.694-695 of 2011

(S.A.Bobde and Deepak Gupta,JJ.,)

0.04.2019

JUDGMENT

Deepak Gupta,J.,

1. These appeals by the accused are directed against the judgment of the High Court of Bombay dated 13.10.2010 in Criminal Appeal No. 473 of 1991 whereby the appeal of the State was allowed and the appellants were convicted for offences punishable under Section 302/498A of Indian Penal Code ('IPC' for short) read with Section 34 of IPC and were sentenced to undergo imprisonment for life.

2. Briefly stated the facts are that the Appellant No. 2, Tarabai Dhanaji Dhaigude is the sister of the Appellant No. 1, Sampat Babso Kale. Appellant No. 1, was married to Sharada Sampat Kale on 25.04.1987. After residing for about one year at Thergaon, Chinchwad, they shifted to a quarter in MIDC Colony, Chinchwad. Sharada died of burn injuries suffered during the night intervening 08.07.1989 and 09.07.1989 in the wee hours of the morning of 09.07.1989. It is also not disputed that on the date of the occurrence, the Appellant No. 2 had come to stay at the house of her brother i.e. the Appellant No. 1. Burn injuries were to the extent of 98%. Sharada made two dying declarations - the first was in the nature of the information given to Dr. Sanjeev Chibbar (PW-5), who had attended upon her when she was admitted to the hospital and the second was a formal dying declaration made to Mr. Kamlakar Adhav, Special Judicial Magistrate, Pune (PW-2).

3. The prosecution story is that relations between husband and wife were cordial for about one and a half years. Thereafter, Appellant No. 1 started ill treating his wife since she could not conceive. It is also alleged that, in fact, he wanted to marry again even when Sharada was alive. For this reason, he and his sister had with common intention poured kerosene on Sharada and set her on fire.

4. The defence version is that Sharada belongs to a comparatively well-off family. She was residing with her husband in MIDC Colony quarter which had all facilities. The case set up by the defence is that the parents of the appellants lived in a small one room hut in village Lonand with no facilities of toilet etc.. Appellant No.1 wanted that his wife should go to

look after his parents. She was not willing to do so since material comforts like TV, WC, etc. were not available in the village and the parents lived in a very small one room hutment. According to the defence, on the evening of 08.07.1989, both the appellants requested Sharada to go to the village to look after the ageing parents. Sharada, who was sensitive, got upset and for this reason committed suicide. It was Appellant No. 1 who raised an alarm and tried to douse the fire by throwing water on Sharada. He requested the neighbours to call for an ambulance but when nobody could be contacted on phone, he along with one neighbour went to the hospital to get an ambulance. Thereafter, Sharada was taken to Sassoon Hospital, Pune where she was admitted in the Burns Ward. Unfortunately, she passed away in the morning.

5. The accused were charged and tried for the murder of Sharada. The trial court acquitted the accused by giving them the benefit of doubt mainly on the ground that the possibility of the deceased having committed suicide could not be ruled out. The trial court did not rely upon the dying declarations. On the other hand, the High Court came to the conclusion that there was no reason to discredit the dying declarations and held that dying declarations were totally reliable in view of the testimonies of PW-2 and PW-5. The High Court held that the reasoning given by the trial court was perverse and thereafter, allowed the appeal. Hence, the present appeals.

6. We have heard learned counsel for the appellants. The main argument of the learned counsel for the appellants is that the deceased was a very sensitive lady. She, as is apparent from the letters exchanged between her and her husband, was madly in love with him. She, however, did not want to go and live in a village, that too in a small one room hutment and being sensitive in nature, she committed suicide. It is further alleged that even the sister of the deceased had committed suicide. It was also contended that there are various discrepancies in the evidence and the dying declarations cannot be relied upon. It was further urged that the deceased died due to a fire in the kitchen of the house and not in the bedroom which clearly indicated that she had committed suicide. It was also contended that the defence version was a probable version and once there was a doubt then benefit of doubt should have been given to the accused persons. Lastly it was contended that the appellate court should not have lightly interfered with the findings given by the trial court.

7. With regard to the powers of an appellate court in an appeal against acquittal, the law is well established that the presumption of innocence which is attached to every accused person gets strengthened when such an accused is acquitted by the trial court and the High Court should not lightly interfere with the decision of the trial court which has recorded the evidence and observed the demeanour of witnesses. This Court in the case of *Chandrappa & Ors. v. State of Karnataka*[1] laid down the following principles:-

> "42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:
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> (i) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

8. We may first deal with the evidence in relation to the dying declarations. Dr. Sanjeev Chibbar (PW-5) states that he was working in Sassoon Hospital, Pune in Ward No. 27 where the deceased Sharada Sampat Kale was brought with 98% injuries of burn. He asked her how she had suffered the burn injuries and she replied as follows:

"On being doused by her husband Sampat Baba Kale and his sister with kerosene and set on fire at 12.30 a.m.

(approximately). "

9. On the basis of the information given by the deceased, PW-5 enteredthis as the history of the case in his own writing and he has proved the same in the Court. He further states that thereafter PW-2 came to the ward to record the dying declaration of the deceased. This witness states that before the dying declaration was recorded by the PW-2, he examined her and found that she was mentally fit and conscious to make her dying declaration. He further states that the dying declaration was recorded by the Special Judicial Magistrate in his presence in question and answer form. Since the hands of the deceased were burnt, PW-2 took the impression of the left big toe on the statement. He made the following endorsement on the dying declaration:

"The statement issued to me by the patient is in the total presence of her mental

faculties and in presence of the staff nurses. I certify her fit to issue this statement."

10. PW-5 further states that he signed the aforesaid statement and, in his presence, the Special Judicial Magistrate read over the contents of the dying declaration to Sharada who admitted the same as correct. Thereafter, PW-2 made an endorsement to this effect and signed the same. The witness in cross¬examination admitted that in case of patients of serious burn injuries painkillers are administered to the patients. He also admits that in such cases the trauma may cause delusion in the mind of the person. After perusal of the treatment chart he stated that Fortwin injection was given to the deceased at 3.30 a.m.. He does not rule out the possibility of the injection having been given before recording the dying declaration.

11. The other important witness is Mr. Kamlakar Adhav (PW-2), who was Special Judicial Magistrate, Pune. According to him, he was asked by the police to record the statement of Sharada Sampat Kale and thereafter he went to Ward No.27 in Sassoon Hospital, Pune. He was told by PW-5 that the female patient was fit and fully conscious to make the dying declaration. On his asking, the deceased told him that her name was Sharada Sampat Kale, aged 25 years and she gave her complete address. She was conscious and told him that she was voluntarily making the statement. The dying declaration which this witness has proved reads as follows:

"Q.1: Whether you are fully conscious?
A- Yes.
Q.2: I am Spl. Judicial Magistrate, Do you understood this?
A: Yes.
Q.3: How you sustained burns?

A. Today on 8.7.89 at night at about 1.30 hrs. at my residence my husband Sampat Babasaheb Kale and my sister in law Tarabai Dhanaji Dhaigude poured kerosene on my person and set me on fire and I sustained burn injuries. Quarrels used to take place between we both husband and wife and he also used to quarrel with me that I could not give birth to child and used to ill treat me. Yesterday at night due to above reason both of them poured kerosene on me and set me on fire and I sustained burns."

12. Rest of the aforesaid statement is similar to that given to PW-5 and need not be repeated. A suggestion has been put to PW-2 that this statement was not recorded in the presence of PW-5 and, therefore, the name of Dr. Chibbar has not been mentioned by him in the dying declaration. He denied the said suggestion. He denied the suggestion that Sharada was not in a position to utter a single word because of extensive burn injuries.

13. In our view, though dying declarations stand proved, the issue is whether we can convict the accused only on the basis of these dying declarations. In a case of the present nature where the victim had 98% burns and the doctor has stated from the record that a painkiller was injected at 3.30 a.m. and the dying declaration had been recorded thereafter,

there is a serious doubt whether the victim was in a fit state of mind to make the statement. She was suffering from 98% burns. She must have been in great agony and once a sedative had been injected, the possibility of her being in a state of delusion cannot be completely ruled out. It would also be pertinent to mention that the endorsement made by the doctor that the victim was in a fit state of mind to make the statement has been made not before the statement but after the statement was recorded. Normally it should be the other way round.

14. No doubt, a dying declaration is an extremely important piece of evidence and where the Court is satisfied that the dying declaration is truthful, voluntary and not a result of any extraneous influence, the Court can convict the accused only on the basis of a dying declaration. We need not refer to the entire law but it would be apposite to refer to the judgment of this Court in the case of *Sham Shankar Kankaria v. State of Maharashtra*[2] held as follows:

> "11. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of deceased was not as a result of either tutoring or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence"

15. In the present case, as we have already held above, there was some doubt as to whether the victim was in a fit state of mind to make the statement. No doubt, the doctor had stated that she was in a fit state of mind but he himself had, in his evidence, admitted that in the case of a victim with 98% burns, the shock may lead to delusion. Furthermore, in our view, the combined effect of the trauma with the administration of painkillers could lead to a case of possible delusion, and therefore, there is a need to look for corroborative evidence in the present case.

16. The two accused filed separate written statements under Section 313 of Criminal Procedure Code ('CrPC' for short). The defence, as pointed out above, was that the deceased was not willing to go to the village to look after her in-laws and, therefore, she committed suicide. The defence cannot be brushed aside.

17. There are two factors which cast a grave doubt with regard to the prosecution story. As pointed out above, the prosecution story is that the appellants- brother and sister, poured kerosene on the victim and set her on fire. It is the admitted case that the house in which the victim was residing with her husband consists of one room with a kitchen. It stands

proved that the fire took place in the kitchen and not in the bedroom. The panchanama (Exhibit 13) and the evidence of Narayan, panch witness (PW-1) clearly show that when the accused Sampat Babso Kale was taken to his residence after he was arrested, he opened the door by removing the lock. This clearly indicates that after the victim had been taken to the hospital, the premises was lying locked. Presumably, the second appellant or any other person in the house had also gone with the victim. In the first room there was a cot, mattress, mosquito net, etc.. There was a kitchen in the adjoining area which had a separate privy and bathroom. There was a plastic container containing kerosene oil. There was smell of kerosene in the kitchen and there was water on the floor of the kitchen. A match box and some burnt cloth were also found in the kitchen. This proves that the occurrence took place in the kitchen and not in the bedroom.

18. The second important factor which comes out from the statement of the panch witnesses is that in the first room in which there was a cot, there were two pillows on the cot and below a pillow there were some ornaments and other things. The panchanama report indicates that the ornaments were one yellow and black mangalsutra, a nathni (nose ring), some glass bangles and peinjan (an ornament worn on the foot). It is also recorded that, according to the accused, these ornaments belong to his wife. Mangalsutra, peinjan and even glass bangles are such ornaments which an Indian married woman would normally not remove. In Indian society these are normally worn by the ladies all the times. Therefore, the defence version that the deceased took off all these ornaments and then went to the kitchen and committed suicide cannot be totally ruled out.

19. Another factor which needs to be taken into consideration is that none of the witnesses from the neighbourhood have been examined. Even as per the prosecution case it was the neighbours who first raised an alarm. There is no explanation why none of them have been examined. It is also the prosecution case that the accused husband along with another neighbour went to the hospital to arrange for an ambulance. This person has not been examined. The non-examination of these important witnesses leads to non-corroboration of the dying declaration. The best witnesses would have been the neighbours who reached the spot immediately after the occurrence. They would have been the best persons to state as to whether the victim told them anything about the occurrence or not.

20. In view of the aforesaid circumstances the trial court held that the prosecution had failed to prove its case beyond reasonable doubt. This finding of the trial court could not be said to be perverse. It was based on a proper appreciation of evidence. The trial court, after discussing the entire evidence in detail, had come to the conclusion that the prosecution had failed to prove its case beyond reasonable doubt. The High Court came to a different conclusion. On perusal of the entire evidence and the law on the subject we are of the view that the trial court was right in holding that the prosecution had failed to prove its case beyond reasonable doubt.

21. In view of the above, we allow the appeals and set aside the judgment of the High Court.

22. Appellant No. 1 is stated to be in jail. He shall be released forthwith, if not required in

any other case. Appellant No. 2 is on bail. Her bail bonds, if any, stand discharged.

Judgment Referred.

[1]*(2007) 4 SCC 0415*
[2]*(2006) 13 SCC 0165*