



2023 INSC 977

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 06 OF 2011

SHAMBHUBHAI KALABHAI RAVAL

.....APPELLANT(S)

VERSUS

STATE OF GUJARAT

.....RESPONDENT(S)

JUDGMENT

ABHAY S. OKA, J.

1. The appellant is the husband of the deceased, who was convicted for the offences punishable under Sections 306 and 498A of the Indian Penal Code (for short 'IPC'). The marriage between the appellant and the deceased was ten years old, when on 31.07.1994, the deceased poured kerosene on her own body and set herself ablaze. The burn injuries suffered by her was the cause of death, which happened on 04.08.1994. The prosecution mainly relied upon the dying declaration of the deceased recorded by PW3-Kachrabhai. The dying declaration was recorded between 09:45 P.M. to 10:00 P.M. on 31.07.1994. Apart from relying upon the dying declaration, the prosecution relied upon the evidence of PW1-

Dolabhai, the father of the deceased and PW4- Pravin Kumar, the brother of the deceased. Unfortunately, both the father and the brother did not support the prosecution and they were declared hostile. Admittedly, nothing could be brought on record in their cross-examination conducted by the public prosecutor for the benefit of the prosecution.

2. With the assistance of the learned counsel appearing for the appellant, we have perused the evidence of prosecution-witnesses, relevant documents and the dying declaration. The main submission of the learned counsel for the appellant is that there is a serious doubt about the correctness of the dying declaration. Another submission is that Bhavna, the sister of the deceased was a very important witness, who has been withheld by the prosecution. The submissions made by the learned counsel appearing for the respondent is that PW-3, who recorded the dying declaration was an Executive Magistrate who had no enmity with the present appellant and, therefore, there is no reason to disbelieve his testimony. Her submission is that though the dying declaration may not bear an endorsement of the doctor recording the fitness of the deceased to make a statement, on the Yadi forwarded by the police, the doctor had certified her fitness.

3. As stated earlier, the evidences of PW-1 and PW-4, the father and brother of the deceased do not help the prosecution as they did not support the prosecution. Now, what remains is that the dying declaration. If the conviction is to be based only on the dying declaration, necessarily, it must be of an unimpeachable quality.

Before we go into the issue of the doubts expressed by the learned counsel appearing for the appellant about the dying declaration, it is necessary to make a reference to what the deceased purportedly stated in her dying declaration. Answers to question Nos. 6 and 7 are most material which read thus: -

"6. What is done to you?

Answer : Today at 7.00 p.m. I was prepared dinner. When my sister came at my house at that time, my mother-in-law was quarrelling with me. My husband had given 2-3 sticks blows to me and due to unbearable pain; I poured kerosene on my body and put fire myself. My sister Bhavna was came to meet me.

7. How this incident happened?

Answer : That quarrel took place alternatively with my mother-in-law and due to this incident took place."

4. On a conjoint reading of answers given to question Nos. 6 and 7, assuming that what is stated therein is correct, we find that according to the deceased, it was the conduct of the mother-in-law, which prompted her to take the extreme step. It is pointed out that initially the mother-in-law was made an accused but she died. Taking the allegation made by way of answer to question No. 6 against the appellant-husband as correct, it is not sufficient to come to the conclusion that the act done by the husband was the cause for immediate instigation to the deceased to take the extreme step of burning herself.

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5. What is most important is that Bhavna, the sister of the deceased was present when the alleged act of mother-in-law quarreling with the deceased and her husband giving two or three stick blows to the deceased took place. The prosecution has not explained why the evidence of this material witness was withheld from the Court. This is one reason for drawing an adverse inference against the prosecution.

6. There are other factors on the basis which we can say that the dying declaration is not free from a serious doubt. The said reasons are as under:-

(i) The dying declaration itself does not bear the endorsement of the doctor regarding the fitness of the deceased to make a statement;

(ii) A panchnama (Exhibit '29') was recorded around 10:10 P.M. on 31.07.1994, which records that the deceased was barely able to tell her name and she stated that she could not speak. The alleged dying declaration was recorded between 09:45 P.M. to 10:00 P.M.;

(iii) Even the police personnel, who recorded the panchnama has stated that the deceased was not in a position to speak; and

(iv) PW5 - Dr. Rajendra, who examined the deceased stated in the cross-examination that when he asked the deceased about the cause of burn injuries, she disclosed that she poured kerosene on herself. But she gave no reason why she did the act.

7. These factors taken together create a serious doubt about the correctness of the dying declaration. Therefore, the dying declaration will have to be kept out of consideration. In any case,

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the dying declaration is not of that sterling quality on which the conviction can be based in absence of any other evidence. Therefore, the prosecution has failed to prove the guilt of the appellant beyond a reasonable doubt. The appeal succeeds and the impugned orders are quashed and set aside. The appellant is acquitted.

8. As the appellant is on bail, his bail bond stands cancelled.

9. The appeal is, accordingly, allowed on above terms.

10. Pending application(s), if any, shall stand disposed of.

.....J.  
[ABHAY S. OKA]

.....J.  
[PANKAJ MITHAL]

NEW DELHI;  
NOVEMBER 02, 2023.