IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 24 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VANKAR GOVINDBHAI VARUBHAI
Versus
STATE OF GUJARAT

Appearance:
MR NS SHETH for Appellant
MR KG SHETH, APP for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 28/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. This appeal arises out of a judgment and order rendered by Additional Sessions Judge, Mehsana in Sessions Case No.160 of 1993 convicting the appellant for the offence punishable under Sections 302 and 498-A of I.P.C. and sentencing him to undergo imprisonment for life and R.I. for one year and to pay a fine of Rs.200/-, in default, to undergo S.I. for one month for the said offences respectively.

2. The facts of the case are that the appellant was married to Ramilaben. They were staying at village Irana of Kadi Taluka of Mehsana District. On April 30th, 1993, while they were at home, it is alleged by the prosecution that the appellant poured kerosene on Ramilaben and set her to fire at about 3.00 p.m., as a result of which Ramilaben sustained severe burns injuries on about 60% of her body and ultimately succumbed to the same. It appears that the appellant also sustained burns injuries. After the incident, the appellant was found and apprehended at the very spot. Both of them were taken to the hospital and police was informed. The police arrived and took complaint from deceased Ramilaben. The Executive Magistrate was also informed and requested for recording the dying declaration of Bai Ramila. He went to the hospital and recorded the dying declaration. Both in the complaint as well as the dying declaration, Ramila indicated that she was set to fire by her husband after pouring kerosene, that they were alone in the house, that the appellant was in the habit of drinking and on that day also, he had consumed liquor. She, therefore, asked him as to why he was drinking. That annoyed the appellant. He, therefore, bolted the door of the house from inside, poured kerosene on the deceased and set her ablaze.

2.1 Upon investigation, the police found sufficient evidence to connect the appellant with the offence and, therefore, a chargesheet was filed in the Court of JMFC. The learned JMFC, after following the procedure, committed the case to the Court of Sessions and Sessions Case No.160 of 1993 came to be registered.

2.2 Charge was framed at Exh.2 to which the appellant accused pleaded not guilty and claimed to be tried. The prosecution adduced oral and documentary evidence.

2.3 In statement under Section 313 of Cr.P.C., the accused appellant said that the evidence is concocted, that he has been framed up and that he would like to depose on oath himself and lead evidence. He himself

deposed before the court and examined 5 other witnesses in defence.

2.4 The learned Additional Sessions Judge, after considering the evidence led by the prosecution as well as the defence, came to the conclusion that the prosecution could prove the charges against the appellant beyond reasonable doubt and recorded the conviction. The learned Additional Sessions Judge was not impressed by the defence that the deceased wanted to go to her parental house and that the appellant was facing shortage of money, that he, therefore, asked her to postpone her visit by a few days, that this upset the deceased and she, therefore, committed suicide by pouring kerosene over herself and setting herself to fire. As per the defence, the appellant tried to set out the fire and in doing so, he also sustained burns injuries. The Trial Court discarded the defence and accepted the prosecution case and recorded the conviction and imposed sentence, as stated above.

3. Aggrieved by the said judgment and order, the present appeal is preferred.

4. Learned advocate Mr. Sheth has taken us through the record and proceedings. He has read over the oral evidence adduced both by the prosecution and the defence. He submitted that there are considerable discrepancies which would render the prosecution case doubtful and the defence probable. He submitted that the Trial Court ought to have given benefit of doubt to the appellant, if not a clean acquittal.

5. To substantiate his submission, Mr. Sheth submitted that the case mainly hangs on the dying declaration recorded by the Executive Magistrate Thakorbhai Becharbhai Brahmbhatt (Exh.8). There is no endorsement on the dying declaration recorded by this witness to the effect that the patient was conscious and was in a fit state of mind. In view of the fact that the deceased had sustained severe burns injuries, her condition must be deteriorating fast and in such eventuality, she could not have given the dying declaration. In order that the dying declaration can be accepted and conviction can be recorded on the basis thereof, there ought to have been an endorsement by a competent doctor to the effect that the patient was conscious and was in a fit state of mind to give a dying declaration. Mr. Sheth submitted that the witness claims that he had consulted the doctor before recording the dying declaration. According to the Executive

Magistrate, he had consulted Dr. Parmar. That Dr. Parmar is not examined and against this Dr. Jhaveri (Exh.11) claims that he was consulted by the Executive Magistrate at the time of recording of dying declaration and that he had opined that the patient was conscious. It is, therefore, a matter of doubt whether, in fact, the Executive Magistrate had consulted the doctor and if so, who was the doctor who was consulted, whether it was Dr. Parmar or Dr. Jhaveri. Mr. Sheth, therefore, submitted that this raises doubt about the dying declaration.

5.1 Commenting on the complaint Mr. Sheth submitted that the complaint is recorded by P.S.I Sharadkumar B. Trivedi (Exh.17). There is no evidence adduced by the prosecution to indicate as to when this complaint was recorded and, therefore, it would be a matter of doubt whether such complaint could have been given by the deceased after having sustained such grave burns injuries.

5.2 Mr. Sheth submitted that besides the above weaknesses of the prosecution case, there are certain other aspects which also need to be considered. Mr. Sheth has drawn attention to the deposition of Dr. Jhaveri (Exh.11) who had also treated the accused appellant for burns injuries. This doctor admitted that he felt that dying declaration was required to be recorded but still he did not record the dying declaration of the deceased. Dr. Jhaveri has further stated that he had taken blood of the accused appellant to ascertain whether he had consumed liquor. Report of this blood sample has not been produced by the prosecution. This doctor has not recorded the case history of deceased Ramilaben and, therefore, the prosecution case gets weakened.

5.3 Mr. Sheth has drawn attention of this court to the evidence led by the defence. The appellant was examined at Exh.27. He reiterates his defence. Defence Witness No. 2 (Exh.30) is Baldevji Thakhuji Vaghela who says that he had gone to the place of incident and had noticed a lady having sustained severe burns injuries. He had also seen the accused. D.W.3 is Govindbhai Premjibhai Patel through whom it is proved that the appellant was admitted in the hospital. Dr. Jagdish Narottamdas Gondalia D.W.4 (Exh.36) was the doctor who had treated the appellant for burns injuries. D.W.5 (Exh.37) Savjibhai Harjibhai Jadav says that he was present at his house. The deceased herself poured kerosene and set herself ablaze. Her husband was putting out the fire. He rushed to the place and saw that both

the deceased and the appellant had sustained burns injuries. He admits in cross-examination that he had gone to the house of the appellant on hearing shouts. The last witness examined by the defence is Jagdishbhai Varubhai Vankar, brother of the appellant at Exh.38. He says that there was no dispute between the appellant and his wife, deceased Ramilaben.

6. Mr. Sheth submitted that if the evidence as a whole before the court is considered, the prosecution case becomes doubtful to some extent. As there is no endorsement on the dying declaration as to whether the patient was conscious and there is discrepancy about the name of the doctor against which there is evidence led by the defence to show that there was no dispute between the appellant and his wife, that the appellant was trying to set out the fire at the time of the incident, that he had himself sustained burns injuries in doing so and therefore, the defence taken by the appellant cannot be considered as improbable. According to Mr. Sheth, the benefit may be given to the appellant and the conviction may be set aside.

7. Learned Additional PP Mr. Sheth has opposed this appeal. He submitted that it is true that the Executive Magistrate has deposed that he had consulted Dr. Parmar before recording the dying declaration but deposition of Dr. Jhaveri makes it clear that it was Dr. Jhaveri who was consulted by the Executive Magistrate before recording the dying declaration and such an endorsement is made on the yadi by the doctor. Mr. Sheth submitted that it is true that the exact time of recording the complaint is not brought on record but it is certainly before recording of the dying declaration which is between 1645 and 1700 hours. The deposition of P.W.5 Sharadkumar Trivedi (Exh.17), if seen, indicates that he recorded the complaint of the deceased, as stated by her. Thereafter, panchnama of her physical condition was drawn. That panchnama is at Exh.21 which is drawn between 1700 and 1730 hours and, therefore, there is no reason to doubt the dying declaration.

7.1 Mr. Sheth submitted that the defence has admitted panchnama (Exh.21) of the physical condition of the deceased. In that panchnama, she had declared before the panch witnesses that she was set to fire by the appellant at about 3.00 p.m. on that day because she had rebuked the appellant for drinking liquor. Mr. Sheth submitted that the defence version that the appellant tried to set out the fire by covering the deceased with a bedding or a quilt does not get any support from the

material on record particularly the panchnama of the place of offence. Such bedding or quilt is not to be found. If that was really used, it would have been seen or noticed at the place of the incident. Mr. Sheth submitted that the reason indicated for committing suicide by the defence is also very petty and ordinarily no lady with a young child would take such a drastic action. The defence, therefore, is improbable. The court below has considered this aspect and has convicted the appellant. This court may, therefore, not interfere with the judgment and order impugned herein.

8. We have considered the contentions raised before us in light of the record and proceedings before us.

9. We are convinced that no error is committed by the court below while recording conviction for the reasons that would be stated in the paragraphs to follow.

10. Dying declaration (Exh.10) clearly implicates the appellant. It is recorded by an Executive Magistrate Thakorbhai Becharbhai Brahmbhatt (Exh.8). He states that he went to the hospital, consulted the doctor, found that the patient was conscious and obtained an endorsement of the doctor and then recorded the dying declaration. This aspect of the deposition is supported by Dr. Jhaveri who also says that he was consulted by the Executive Magistrate before recording the dying declaration and that he had certified that the patient was conscious. On perusal of the original record, it is found that Dr. Jhaveri has put an endorsement on the yadi (Exh.9) to the effect that the patient was conscious. Apart from this, we have the evidence in the form of complaint (Exh.18) which was recorded by P.S.I. Sharadkumar Trivedi (Exh.17). The complaint in original is examined by us and we find that on that complaint also, there is an endorsement of the doctor that the patient was conscious when the complaint was recorded. The complaint assumes the nature of dying declaration since the patient died thereafter. In that complaint also, the present appellant is clearly implicated. We do not find any reason to doubt these two dying declarations. It is true that the Executive Magistrate has stated that he had consulted Dr. Parmar but that seems to be a genuine mistake on part of the Executive Magistrate. For our satisfaction, we have examined the original record and found that the endorsements are signed by the same doctor and Dr. Jhaveri admits to have made such endorsements. This being so, the dying declaration was recorded while the deceased was conscious. It is recorded by independent witnesses namely, the Executive Magistrate

and the Investigating Officer and, therefore, there is no reason to doubt the dying declarations.

11. There is evidence of Naranbhai Varubhai, father of the deceased (Exh.16). He speaks of the ill-treatment being meted out to the deceased by the appellant consistently. He states about an occasion when the deceased had come down to his place because of the harassment. He narrates another incident when the deceased and the appellant had gone to his place and the deceased declined to go back with the appellant. However, the appellant forcibly took the daughter of the deceased away in the midst of the night at about 2.00 a.m. About the incident also, he states that he learnt about the incident through other sources. Neither the appellant nor his relatives have informed the father of the deceased about the incident. He denies suggestion about the appellant having not ill-treated the deceased and the deceased having committed suicide because of unemployment of the appellant. The deposition of this witness brings on surface all the aspects of the conduct of the appellant when he does not inform his in-laws nor do his relatives inform the father of the deceased.

12. The dying declaration of the deceased to the effect that because the appellant had consumed liquor and because she had rebuked him, he was angry and he poured kerosene and set her ablaze gets corroboration from the panchnama of the physical condition of the appellant (Exh.22). That panchnama indicates that the appellant was found to have consumed liquor. It is recorded in the panchnama that smell of country-made liquor was found to be coming from his mouth. This panchnama was admitted by the defence and thus, taken on record. Likewise, Exh.21 panchnama of the physical condition of the deceased also lends corroboration to the version emerging from the dying declaration.

13. In view of the above evidence on record, the evidence led by the defence is not worth acceptance. It is only an after-thought that the appellant has taken this plea of the deceased having committed suicide and he having sustained burns injuries while trying to save her. We are at loss to appreciate as to how the appellant could have sustained burns injuries if he had tried to cover the deceased with a quilt or with a bedding. This defence becomes more vulnerable to non-acceptance for the reason that the panchnama of the place of offence does not indicate presence of any bedding or a quilt. We are,

therefore, not inclined to accept the defence version.

14. We have closely gone through the judgment impugned herein. We have discussed the evidence as a whole and we find that the learned Judge has considered the evidence in its correct perspective and has correctly recorded conviction. We find no reason to interfere with the judgment and order impugned herein. The appeal, therefore, deserves to be dismissed and the same is dismissed.

(M.C. Patel, J.)

(A.L. Dave, J.)

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