

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 538 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

DILIPBHAI PRABHUBHAI DARJI

Versus

STATE OF GUJARAT

Appearance:

MS BHARTI RANA for MS BANNA S DUTTA for Appellants
MR KP RAWAL, APP for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE M.C.PATEL

Date of decision: 30/04/2003

ORAL JUDGEMENT

1. The appellants who are father and son were the accused in Sessions Case No.136 of 1993 before the learned Additional Sessions Judge, Vadodara. They were convicted of the offences under Section 302 read with Section 34 and Section 498-A of the I.P.C. For the offence under Section 302, each of them was sentenced to a life term and to pay a fine of Rs.500/-, in default, two months' Rigorous Imprisonment and for the offence under Section 498-A, each of them was sentenced to Rigorous Imprisonment for one year and a fine of Rs.250/-, in default, Rigorous Imprisonment for two months. The sentences for both the offences were ordered to run concurrently. The accused nos. 3 and 4 were mother and daughter but they were acquitted. There is no appeal against the acquittal.

2. The victim Manishaben was the wife of the appellant no.1, Dilipbhai. Their marriage had taken place about eight months before the date of the incident. According to the prosecution, all the accused had been harassing Manishaben on account of insufficient dowry. Before her marriage, Manisha was living with her parents at Jalna in Maharashtra. After her marriage, she started living with her husband and the other accused in Room No.399, Adarshnagar, Tarsali, District Vadodara.

3. According to the prosecution, at about 1.30 in the afternoon on 2nd September, 1992, the accused no.1 pushed his wife Manisha into the toilet and the accused no.2 demanded Rs.3,000/-. The accused no.1 held Manisha down, the accused no.2 poured kerosene on her and the accused no.1 put a match to her and she suffered severe burns. She raised cries and on hearing them, many neighbours rushed to the scene. Amongst them were Meenaben Ganava (p.w.1), Nurmahmad Hasanbhai (p.w.4), Jitubhai Bharatsingh (p.w.5). All of them were living in Adarshnagar.

4. According to Meenaben (p.w.1), she came out of her house on hearing the cries of Manishaben. She saw Manisha burning. Many people had gathered. Manisha was stammering. Thereafter, she went back to her shop as she was scared. According to her, when she went to see her in hospital at about 5 o'clock, Manisha told her that she had been set on fire by her husband and father-in-law.

5. Nurmahmad Hasanbhai (p.w.4) lived in room No.472 in Adarshnagar. He too came out on hearing cries and shouts. Manisha had told him to take her to hospital.

Her husband and father-in-law were also there. Her husband Dilip approached him and told him to make a telephone call to the hospital. He, then, approached one Ajabbhai, who was a social worker. Thereafter, the ambulance came and they took her to the hospital. Manisha was saying at that time that she had been set alight by her husband, father-in-law and sister-in-law. Prabhudas, the father-in-law, had said at that time that no outsider could touch a woman according to their custom. Even the bedsheet in which Manisha was wrapped was brought by some neighbour.

6. Jitubhai Bharatsinh (p.w.5) lived in Room No.452 in Adarshnagar. He too said that he had come out on hearing cries and Prabhudas had said that no other male can touch the woman according to their custom. Manisha was taken in an ambulance to the hospital. There were three kerosene cans lying near the bathroom.

7. Ajabbhai Dadubhai Chauhan (p.w.9) also lived in Adarshnagar. According to him, he was at home when the incident occurred. The accused no.1 Dilip came to call him at about 1.30 p.m. He told him that his wife had received burns. He went there and saw that Manisha had suffered severe burns. When he reached there, Manisha caught his hand and told him to take her to the hospital. She was wrapped in a bedsheet and taken to the hospital in an ambulance. He also accompanied her to the hospital and, in the ambulance, she had said that all the accused had set her on fire.

8. Dr. Neela Parekh (p.w.7) was on duty as Medical Officer in SSG Hospital at Vadodara. Manisha was brought to her at about 2.45 p.m. She was conscious and she gave a history of homicidal burns on account of dowry. Dr. Parekh made a note to that effect in the case papers (Exh.25). Manisha had 1st and 2nd degree burns on her face and she also had burns on her chest, back, hands and feet. The total burns were 95 to 99%. She was sent to Burns Ward for treatment.

9. At about 3.05 p.m., C.B. Jadia (p.w.13), who was P.S.O. in Makarpura Police Station, received a vardi on telephone from Duty Head Constable Narvarsinh Laloosinh in the hospital that he had received a vardi from Dr. Meenaben that Manishaben had been set on fire by her husband and father-in-law and she had been admitted to hospital and was under treatment and that her condition was serious. This information was noted in the station diary and the vardi is produced at Exh.39. That vardi was given to P.I. M.S. Baranda (p.w.14). He

immediately proceeded to the hospital. He took down the complaint of Manisha (Exh.41). In her complaint, she accused her husband, father-in-law, mother-in-law and sister-in-law of harassing her for dowry and then she said that her husband had pushed her into the toilet and after her father-in-law poured kerosene on her, her husband had set her alight. P.I. Baranda immediately wrote a yadi (Exh.28) to the Executive Magistrate requesting him to record the dying declaration of Manisha. On that yadi, Dr. Neela Parekh made an endorsement at 4.00 p.m. that the patient was conscious.

10. Niranjan Kantilal Joshi, Executive Magistrate (p.w.8) received the yadi at 4.40 p.m. He immediately went to the hospital. He cleared the room of the relatives and other persons who were there. Manisha's condition was serious but she was able to speak. He recorded her dying declaration in question and answer form between 4.50 p.m. and 5.15 p.m. (Exh.29). He took her thumb impression on the dying declaration since her hands were covered with bandage and only the thumb was left open.

11. Manisha died at 9.15 at night on the same day. The post-mortem was carried out on the next day by Dr. Vaishakhi N. Dave (p.w.2). She noted the burns injuries in Column No.17 of the post-mortem report (Exh.12) as follows:

External injuries

IIo - Io - Dermoepidermal Burn Injuries with singering of hair & blackening of skin with blister formation peeling off of skin in huge patches to expose a bright red dermis, over the following parts of the body

- . face - scalp hair from front & side, ear to ear
- . neck - circumferentially
- . both upper limbs circumferentially
- . trunk - whole from front except a 5 cm broad patch around umbilicus circumferentially
- . upper part of both buttock and lower back
 - . both lower limbs upto fingers on dorsum of foot
 - . part of perineum peripherally

The cause of death was shock following burns.

12. Now, the prosecution case rests mainly on the dying declaration recorded by the Executive Magistrate.

The dying declaration is at Exh.29. When Manisha was asked what had happened and how the incident had occurred, she said that she had been set on fire. At about 1.40 p.m., she was at her home with her husband and her father-in-law. She had been married for about eight months. Her husband and father-in-law had been torturing her. Since her father had not given any articles or cash as dowry at the time of her marriage, she was tortured and she was repeatedly told to bring Rs.3,000/- from her father. Her father was living at Jalna in Maharashtra. He was not well-off enough to pay dowry. Since she could not bring the amount in spite of the repeated demands, her mother-in-law and sister-in-law again said that her father had not given anything. Thereafter, they went away to roll papad. Then her husband forcibly pushed her into the toilet. Her father-in-law brought a can of kerosene. Her husband held her down and her father-in-law poured kerosene on her. Her husband put a match to her and she started burning. After some time, her father-in-law poured water on her. Thereafter, her husband, her mother-in-law and other neighbours had brought her to hospital. When she was asked whether she had anything else to say, she said that she had been set alight on account of inability to pay dowry. Nothing substantial was brought out in the cross-examination of the Executive Magistrate to cast doubt on the genuineness of the dying declaration.

13. The learned Additional Sessions Judge dealt with all the objections to the dying declaration in paragraphs 13 to 18 of the judgment and we agree with him that the dying declaration is genuine, reliable and truthful and that it is a cogent and reliable piece of evidence. It is sufficient to bring home the charge to the accused even without any corroboration. However, the learned Judge has also noticed and relied upon certain circumstances for corroboration. As stated earlier, the evidence of the neighbours clearly shows that according to the appellant no.2, no other male could touch his daughter-in-law. That only shows his callousness and indifference. The accused did not even provide a bedsheet and it was obtained from a neighbour. Manisha had also implicated the appellants in her statement before the neighbours. It appears that her mother Bhavnaben (p.w.6) was in town on that day and she arrived at the hospital on receiving a word of the incident. Manisha had complained to her that she had gone hungry for three days. The learned Judge also referred to the contents of one letter written by Manisha to her parents (Exh.15) sometime before the incident and he rightly held that the allegation of demand of money was corroborated

by this evidence. The oral evidence of Manisha's parents, Chatrabhuj Tapubhai (p.w.3) and Bhavnaben Chatrabhuj (p.w.6) also proves this allegation.

14. It was suggested in defence that Manisha had committed suicide but the learned Judge has rightly negatived it as without any basis.

15. Thus, the evidence discussed above proves beyond reasonable doubt that it was the appellants who had set Manisha on fire since she could not meet their demand of Rs.3,000/-. The learned Additional Sessions Judge has, therefore, rightly convicted them of the offences under Section 302 read with Section 34 and Section 498-A of the I.P.C. The appeal, therefore, fails and is dismissed.

(M.H. Kadri, J.)

(M.C. Patel, J.)

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