

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 771 of 1997

HON'BLE MR.JUSTICE J.M.PANCHAL

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?

ASHOK OMKAR GODSE

Versus

STATE OF GUJARAT

Appearance:

MS BANNA S DUTTA for Petitioner

MR RM CHAUHAN, APP for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 26/12/2003

ORAL JUDGEMENT

1. The appellant was the original accused in Sessions Case No.136/1995 before the Additional Sessions Judge, Surat, who, by his judgement and order dated 15.5.1997, convicted the appellant of the offence under section 302 and 504 of IPC and sentenced him to life imprisonment and a fine of Rs.250/-, in default, R.I. for one month. The charge against the appellant was that he caused the death of his wife by pouring kerosene on her and setting her on fire.

2. The appellant and the victim Gangaben were married about 15 years before the date of the incident. The evidence of Shambunath Chintamani (PW5), the father of Gangaben, shows that the appellant and his wife were living at some distance from them in the hutment near Rupali Canal in Surat. The incident occurred on 7.2.1995. On that day he was informed by someone passing by that smoke was coming out from Ganga's house. When he went there, he saw a crowd there. Ganga had received burns. When he asked her as to what had happened, she told him that the appellant had first beaten her with a soda bottle, then sprinkled kerosene on her and set her on fire and thereafter he had left. The appellant took Ganga to Amruta Hospital in a rickshaw.

3. Dr. Jayesh Kothari (PW7) is a practicing surgeon. He runs Amruta Hospital near Rupali Canal. According to his evidence, at about 7 O' clock in the evening on 7.2.1995, Gangaben was brought to hospital with burns by her husband. She was admitted to the hospital. When he asked her how she had received burns, she told him that her husband had sprinkled kerosene on her and set her on fire. He informed Umra Police Station by telephone and started treatment. She was given antibiotic and pain-killer drugs. She was fully conscious and was able to speak. The certificate Exh.27 issued by him shows that Gangaben had burn injuries as follows:

"Superficial to deep burns over body measuring about 88% to 91%.

Body areas affected were:

1. Both upper limbs : 8%
2. Both lower limbs : 36%
3. Ant. Chest : 4 to 6%
- Post chest : 9%

- 4. Ant. & Post Abdomen : 18%
- 5. Ext. Genitals : 1%
- 6. Head : 2 to 3%

Total : 88 to 91%

No Ext. mark of injury over body."

The telephonic message conveyed by Dr. Kothari was recorded in the Station diary at Umra Police Station and the relevant extract is at Exh.40. It shows that Dr. Kothari had given the information that Ganga had been set on fire by her husband after pouring kerosene on her and that she had been brought to the hospital by her husband, but he had not returned after he went to bring medicine. On receiving this information, PSI Nanubhai Parmar (PW 13) went to Amruta Hospital immediately. There he questioned Gangaben and recorded the complaint (Exh.47). Since subsequently Gangaben died of burns on 15.2.1995, the said complaint became a dying declaration. In that dying declaration also she described how the incident had occurred. She said that about two days before the incident, she had gone to the place of her maternal uncle. Her husband had promised to come to fetch her, but he did not come. She, therefore, came back alone. Her husband was gambling nearby. On seeing her, he came home. He gave her abuses and started quarreling and said "why did you stay at the place of your maternal uncle for 2-3 days?". Then he pressed her throat and started beating her. He closed the door and when she tried to open the door he stopped her and threatened to kill her. There was a can of kerosene in the house. He poured kerosene on her and he lit a match stick. She tried to stop him by grabbing his hand, but he put the match to her body and she started burning. She raised shouts and came out of the house. Her neighbours Maruti Maratha, Bhicharimali, Santaben and others came there. While she was burning, she had tried to grab her husband, but he had pulled himself away and while trying to brush aside her hand, he too has received slight burns on his hand. Thereafter her husband took her in a rickshaw to Amruta Hospital. PSI Parmar thereafter wrote a Yadi to the Executive Magistrate after obtaining doctor Kothari's endorsement on the Yadi that Gangaben was conscious.

4. Mukeshchandra Bhavsar (PW8), who was the Executive Magistrate, received the Yadi at 9.40 at night. On receiving the Yadi he immediately went to Amruta Hospital. He arrived there in about seven minutes. He contacted Dr. Kothari and showed the Yadi to him and

made inquiries about the patient. He asked the doctor to take him to the room where the patient was. The doctor told him that Gangaben was conscious and led him to the room of Gangaben. He put a few questions to Gangaben to verify that she was conscious. She was alone in the room. There were one woman and police personnel. He told them to leave and closed the door. Thereafter he recorded the dying declaration of Gangaben (Exh.31). Gangaben gave her name and address and told him that she was working as a labourer. She stated that she had received burns. When she was asked how it had happened, she said that she had a quarrel with her husband Ashokbhai and he has pressed her throat and after threatening to kill her had closed the room and set her on fire after sprinkling kerosene on her. There was no one else present when the incident occurred. She had no quarrel with anyone else. When she was asked whether she wanted to say something else, she again repeated that her husband Ashokbhai had set her on fire after sprinkling kerosene on her. Mukeshbhai Bhavsar then took the impression of right thumb of Gangaben below the dying declaration.

4. Ramdas Thakkar (PW 10), was the maternal uncle of Gangaben. According to him, Gangaben had come to stay with them for a few days. The accused was to come to fetch her, but since he did not come, Gangaben went back to her home alone. Then he was sent for in the evening and he was told that Gangaben had received burns and had been admitted to Amruta Hospital. He and his wife went there and when they asked Gangaben about the incident, she told them that after she went back, she had a quarrel at home and the appellant had sprinkled kerosene on her. Gangaben's brother Badarinath (PW9) also came to know about the incident in the evening and he went there. The appellant took Gangaben in a rickshaw to Amruta Hospital. He went there and asked his sister as to what had happened and she told him that there was a quarrel since her husband had not come to fetch her from her maternal uncle's place and her husband had set her on fire after sprinkling kerosene on her.

5. Gangaben succumbed to her burns on 15.2.1995. The Certificate issued by Dr. Jayesh Kothari (Exh.28) shows that Gangaben died because of cardiorespiratory failure due to septicemia due to 90% superficial to deep burns. The postmortem was carried out by Dr. Iliyas Shaikh and according to him the cause of death was Septicemia as a result of burns received over her body. He stated that there were about 86% burns on her body and they were sufficient to cause death in the ordinary

course of nature. He also said that the burn injuries were antimortem.

6. The panchnama of the place where the incident occurred shows that there was a can of plastic in which there was some kerosene and there was also a match box. There were signs of kerosene on the earthen floor. Half burned pieces of clothes of the victim were collected. FSL report shows traces of kerosene on the pieces of earthen floor and half burned clothes of the deceased.

7. The appellant was arrested on 7.2.1995 and at the time of arrest there were some burns on his hand. He was examined by Dr. Amratbhai Chhotubhai and the certificate at Exh.24 issued by him shows that he was brought to Civil Hospital on 8.2.1995 at 1.45 am and there was a flame burn on the right forearm 6 x 2 cm red in colour.

8. Thus, there is no dispute that Gangaben received burns on 7.2.1995 and she died of septicemia following burn injuries on 15.2.1995. There is absolutely nothing on record to indicate that the burns were accidental or that she had committed suicide. The defence of the appellant was one of denial. There was a slight burn injury on the right forearm of the appellant and the same was explained by Gangaben in the complaint before the police.

9. The learned counsel for the appellant read the entire evidence before us. We have also closely scrutinised the same. The evidence of Dr. Jayesh Kothari clearly shows that Gangaben was conscious and was able to speak when she was brought to the hospital. She told him what had happened and he conveyed the said information to the police station which was recorded in the station diary. Her complaint was recorded by the PSI and thereafter a dying declaration was also recorded by the Executive Magistrate when she was fully conscious. She also made oral declaration before her father, brother and maternal uncle. In the circumstances we are satisfied that all the dying declarations were genuine, consistent, truthful and reliable. The evidence shows that the appellant and Gangaben were alone in the hut when the incident occurred. There was no reason for Gangaben to implicate the appellant falsely. The appellant has not offered any explanation as to how the incident had occurred. Once we find that the dying declarations made by Gangaben were genuine, truthful and reliable, there is no impediment in recording conviction against the appellant on the basis of the same. The learned Additional Sessions Judge was justified in

convicting the appellant of the offence under section 302 on the basis of the said dying declarations. There is no substance in the appeal and the same is dismissed.

[J.M. PANCHAL, J.]

[M.C. PATEL, J.]

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