

Non-Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1203 OF 2009

MAHADEO NARAYAN MORE & ANR. Appellants

Versus

STATE OF MAHARASHTRA Respondent

J U D G M E N T

Uday Umesh Lalit, J.

1. This appeal challenges the judgment and order dated 26.04.2007 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Appeal No.403 of 1991 whereby it set aside the acquittal of the present appellants and convicted them under Section 302 read with Section 34 IPC and sentenced them to suffer imprisonment for life and to pay a fine of Rs.1,000/-, in default whereof to suffer rigorous imprisonment for six months.

2. PW-1 Sukhdeo and the present appellants are brothers and they were residing separately but in adjacent houses. PW-1 Sukhdeo had sold three lambs. The appellants were demanding their share in the proceeds from PW-1 Sukhdeo and his wife Sushila. Refusal to give them any share led to a quarrel and the appellants who had consumed liquor, allegedly threatened Sushila that she would be set on fire. Sushila had therefore lodged a report (Ext.30) on 16.10.1990 with the Police. On the next day i.e. on 17.10.1990 at about 4.30 pm while PW-1 Sukhdeo had gone to a grocery shop, he heard noise that a lady was burning. When he came rushing, he found Sushila in flames in front of his house. He poured water and doused the fire. Sushila told PW-1 Sukhdeo that appellant no.2 had poured kerosene on her while appellant no.1 was holding her and that she was thus set afire. The Police reached the spot and she was taken to Ural Police Station. Sushila made an oral report to PW-12 PSI Deomuram adverting to the dispute and the quarrel of the previous day and stated that the appellants had again made a demand for money obtained from the sale of lambs, had quarreled with her and later set her afire. As per her version, the incident was witnessed by one Kusum and Motiram.

3. This oral report was reduced to writing with thumb impression of Sushila (Ext.41), based on which Crime No.109 of 1990 was registered

against the appellants. Sushila was removed to the hospital where, after taking opinion of PW-7 Dr. Ravindra Kumar as regards her fitness to record a statement, a dying-declaration Ext.34 was recorded by a Special Executive Magistrate in which Sushila reiterated that the appellants had set her on fire. Sushila expired in the hospital five days later i.e., on 21.10.1990. PW-9 Dr. Siraj Ansari conducted post-mortem and found the cause of death to be septicemia with shock due to 91% burn injuries.

4. The appellants were tried for having committed the murder of Sushila in Sessions Trial No.47 of 1991 in the Court of the Additional Sessions Judge, Akola. The prosecution examined 13 witnesses and principally relied on three dying declarations, the first one being oral dying declaration to PW-1 Sukhdeo, the second being Ext.41 as aforesaid while the 3rd one being Ext.34 which was recorded by the Special Executive Magistrate. Though PW-1 Sukhdeo supported the case of the prosecution, PW-4 Motiram did not and was declared hostile. Kusum was not examined as witness. The trial court was of the view that none of the prosecution witnesses who had accompanied PSI Devmurar had stated that the statement of Sushila was recorded on the spot. As regards other dying declaration Ext.34, the trial court found that the Doctor had not ascertained whether Sushila was in a position to talk, nor had the Executive Magistrate spoken to her before

recording her statement. It was observed that while this dying declaration was being recorded, PW-1 Sukhdeo was with her since the incident and thus he had ample opportunities to tutor her. The trial court gave benefit of doubt to the appellants and acquitted them of the charge leveled against them by its judgment and order dated 10.07.1991.

5. The State being aggrieved, preferred Appeal before the High Court. The High Court on re-appreciation of the evidence found that the prosecution had brought home the case against the appellants, that the trial court had not considered the dying declarations vis-à-vis the circumstances appearing on the record in proper perspective and that its approach was quite perverse. The High Court found the appellants guilty and sentenced them to undergo imprisonment for life, as stated above. In this appeal under Article 134 of the Constitution of India read with the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, we have heard Mr. P.R. Kumar, learned advocate appearing for the appellants and Mr. Nitin Lonkar, learned advocate appearing for the State and have gone through the entire evidence on record.

6. The oral reporting made by deceased Sushila which was reduced to writing, namely, Ext.41 is quite consistent with her reporting of the previous

day, namely, Ext.30 and the subsequent dying declaration Ext.34 recorded by the Special Executive Magistrate. In Ext.41, the relevant assertion was to the following effect:

“On 16.10.90 in the evening the two persons i.e. Jagdeo Narayan More and Mahadeo Narayan More who are my real brothers-in-law, after consuming liquor made a demand for money obtained from the sale of she goats and then they abused and quarreled and thereafter they assaulted me and my husband with kicks and fists. In this connection I have lodged report at Police Station Ural on 16.10.90 at 8.30 O’clock in the night.

Since morning, my above named Dir. And Jeth (i.e. Husband’s Younger brother and Husband’s elder brother) abused, and quarreled with me and my husband and these two together took out kerosene from the tin kept in my house and poured the same on my person at about 4 O’clock. Husband’s Younger brother i.e. Jagdeo poured kerosene on my person while husband’s elder brother i.e. Mahadeo caught hold of me. Jagdeo set me on fire by lighting a match stick. At that time I was alone in the house. On account of setting mke on fire, I have sustained injuries on my both hands, back, backside seat portion and on both legs.”

The relevant statements in the dying declaration Ext.34 were as under:

“My brothers-in-law i.e. Jagdeo and Mahadeo took the kerosene container from my house and then poured the same on my person and by lighting the match stick they set me on fire. My saree on the person started burning.”

7. PW-1 Sukhdeo in his testimony deposed to the incident of the previous day as well as the events on the fateful day. PW-7 Dr. Ravindra

Kumar Chaudhary at the beginning of recording Ext.34 had certified “patient conscious and in a position to give dying declaration” and at the end of said Ext.34 had also certified “DD recorded in my presence. Patient conscious during DD”. While in the box, the doctor categorically stated that he was present when the dying declaration was recorded and that Sushila was conscious and fit to make a statement. His deposition in that behalf was as follows:

“I went to the Burn Ward along with him – i.e. Special Executive Magistrate. I examined the patient by name Sushila Sukhdeo More aged 30 years and found her to be conscious and fit for giving dying declaration. I certified it accordingly.

Her dying declaration was recorded by the Spl. Magistrate. I was present there when it was recorded. After its recording, again I examined her. I found her to be conscious. I made endorsement to that effect on the declaration which was reduced into writing the Ex. Magistrate. It is at Ex.34. I admit my signatures on it. When the statement was recorded, myself and the Ex. Magistrate were only there.”

We have seen the original record and the endorsements of the Doctor. The dying declaration Ext.34 thus inspires complete confidence and we do not see any reason to doubt the veracity thereof. Additionally the threat that Sushila would be set on fire was given the previous day, as per Ext.30, recorded on the previous day. Having gone through the record minutely we do not find any infirmity in the assessment made by the High Court.

8. This appeal is, therefore, dismissed. The appellants shall serve the sentence as awarded by the High Court.

.....J.
(Dipak Misra)

.....J.
(Uday Umesh Lalit)

New Delhi,
December 17, 2014



JUDGMENT