

ASHOK LAXMAN GAIKWAD

v.

STATE OF MAHARASHTRA

APRIL 19, 2006

[DR. AR. LAKSHMANAN AND D.K. JAIN, JJ.]

*Penal Code, 1860:*

*s. 302—Accused setting afire his beloved—Conviction by trial Court—Affirmed by High Court—Involvement of accused in the offence has been clearly proved beyond any doubt—There is no reason to disbelieve the dying declaration and the other evidence tendered by prosecution—No case is made out for interference.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 955 of 2005.

From the Judgment and Final Order dated 16.6.2004 of the High Court of Judicature at Bombay in Cr.A. No. 95 of 1998.

Nitin S. Tambwekar, B.S. Sai and K. Rajeev for the Appellant.

A.P. Mayee and Ravindra Keshavrao Adsure for the Respondent.

The Order of the Court was delivered by

ORDER

This appeal is directed against the judgment passed by the High Court of Bombay in Criminal Appeal No. 95 of 1988 dated 16th June, 2004 dismissing the appeal filed by the appellant/accused and thereby convicting the appellant under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life.

Learned counsel appearing on behalf of the appellant took us through the entire evidence and the post mortem certificate and, in particular, the evidence of the doctor. We have carefully perused the evidence adduced on behalf of the respondent. We have perused the dying declaration given by

A the deceased on 25th January, 1987 at 22.30 p.m. It is seen from the remarks of the doctor that the patient, namely, the deceased was conscious and was in a position to give the statement recorded by the Magistrate. It is further seen from the above declaration that the deceased had love affair with the accused and that she opposed the accused marrying for the second time and that the accused on the fateful date poured kerosene on her person and with the help of burning match stick set fire on her, due to which she received the burn injuries. It is clear from the dying declaration that the accused poured kerosene on her person and with the help of burning match stick set fire on her.

C We have also perused the medical evidence given by Dr. Ramesh Namuaji Bhange (P.W.6). It is seen from the doctor's evidence that the deceased disclosed the history to the doctor that the accused poured kerosene on her body and set her on fire and that the judicial Magistrate has recorded the dying declaration of the deceased. It is also seen from the doctor's evidence that before her statement was recorded by the Sub-Judicial Magistrate he had examined her and found that she was conscious and in a position to give the statement. Accordingly, the doctor has signed the endorsement appearing on the dying declaration. He has also identified his signature on the dying declaration. In cross examination nothing contrary has been elicited to discredit the doctor's evidence. The doctor has also explained as to why he initially recorded the word 'suicidal' on the first page of the case papers and when he found the initial statement was wrong, he extracts the word 'homicidal' on the first page of the case papers. He has also explained under that circumstance he has recorded the word 'suicidal'. The doctor also denied the suggestion made to him that the patient has not given him any history against the accused and it is also not correct to say that the dying declaration was not recorded by the Sub-Judicial Magistrate in his presence.

We have also perused the other evidence tendered by the prosecution which in our view supports the case put forward by the prosecution. The learned judges of the Division Bench has considered the entire evidence tendered on behalf of the prosecution in its proper perspective and has come to the conclusion that the prosecution has clearly proved its case beyond reasonable doubt. The reasons recorded by the learned Judges of the Division Bench of the High Court is cogent and convincing. The learned Judges have also affirmed the judgment rendered by the learned Sessions Judge, Pune for the ample reasons recorded in their judgment. We have not been persuaded

to take a different view than the one taken by the Division Bench of the High Court. The involvement of the accused in the offence alleged has been clearly proved beyond any doubt. We have also no reason to disbelieve the dying declaration given by the deceased and the evidence tendered on the side of the prosecution. In our opinion, no case is made out for interference by this Court with the well considered judgment of the High court affirming the verdict of the learned Sessions Judge.

Accordingly, appeal stands dismissed.

R.P.

Appeal dismissed.