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ANTRAM

v.

STATE OF MAHARASHTRA

NOVEMBER 12, 2007

B

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

C

Penal Code, 1860—ss. 299 Exception 2 and 302—Murder—Circumstantial evidence—Four Dying declarations—Death of the victim one day after discharge from the hospital—Plea that s. 302 not attracted as the case was of medical negligence—Conviction by courts below—On appeal, held: Dying Declarations were sufficient to fasten the guilt of the accused—In view of Exception 2 to s. 299 conviction u/s 302 justified.

D

Appellant-accused was prosecuted for having caused death of his wife. Prosecution case was that the relations between the couple were strained and the victim (wife) was living away from the husband, with her three children, in another village. On the day of the incident, the accused was at the house of the victim. Quarrel had started between them, when their daughter (PW 5) was to proceed to school. When PW-5 returned from school for some work, at home, she found her mother in injured condition. Her mother told her that she was assaulted by the accused. PW 5 informed about the incident to her maternal uncle (PW 2) who took her to Primary Health Centre. There, Medical Officer (PW 4) recorded the history of the case from the victim. PW2 also reported the case to Police and case u/s 307 IPC was registered. Thereafter she was taken to a private medical practitioner (PW 6) who in the presence of Police Inspector, recorded statement of the victim. After treatment she was discharged as a cured patient. However, one day after the discharge, she died. The case was converted to one under Section 302 IPC. Trial Court convicted the accused u/s. 302 IPC. High Court confirmed the conviction.

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In appeal, the appellant contended that Dying Declaration was not reliable; and that Section 302 has no application as the deceased could have survived with proper medical care. A

Dismissing the appeal, the Court

HELD: 1. As a matter of fact, there were four dying declarations recorded; two were oral and two were recorded. The dying declarations both oral and written were sufficient to fasten the guilt of the accused. The High Court has elaborately dealt with the authenticity of the dying declarations and had rightly come to the conclusion that they did not suffer from any infirmity. B

[Paras 7 and 10] [984-A, F, G] C

2. The plea, that with proper medical care the deceased could have survived and therefore Section 302 IPC has no application clearly overlooks Exception 2 to Section 299 IPC. The High Court found that the presence of mucus and food particles in the trachea and bronchi cannot be totally delinked from the injuries inflicted by the accused. [Paras 14 and 11] [985-B, G] D

State of Haryana v. Pala and Ors., AIR (1996) SC 2962 and *Sudershan Kumar v. State of Delhi*, AIR (1974) SC 2328, relied on. E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1529 of 2007.

From the final Judgment and Order dated 24.06.2005 of the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Appeal No. 218 of 2005. F

S. Usha Reddy for the Appellant.

R.K. Adsure for the Respondent.

The Judgment of the Court was delivered by G

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Bombay High Court, Aurangabad Bench dismissing the appeal filed H

- A by the appellant upholding his conviction for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and the sentence of imprisonment for life and fine of Rs. 200/- with default stipulation. The judgment impugned before the High Court was delivered by learned Second Additional Sessions Judge, Latur in Sessions case No. B 24 of 2004.

3. Prosecution version in a nutshell is as follows:

- C On 28.11.2003 at about 9:30 a.m., appellant Antram caused death of his wife Shobha by brutally assaulting her with an axe. Shobha was married to the accused long back. Two sons and the daughter were the children born from said wedlock. About 3 years prior to alleged incident, Shobha had started residing at village Kamkheda with the children, which is place of her parents. Accused belongs to village Zari Khurd. He used to intermittently visit Shobha and children at village Kamkheda. The relations between husband and wife had not remained cordial because D accused used to object to Shobha undertaking any job. This was because he used to suspect her character.

- E Accused had been to village Kamkheda about 8 days prior to alleged incident. There is no eye witness to the incident. Prosecution case rests on circumstantial evidence. Accused and deceased were in the house at the time of incident. A quarrel took place between the couple during which accused brutally assaulted Shobha with an axe and thereafter ran away. Sangeeta (PW-5), daughter of deceased and accused, was about F to proceed to school when the quarrel had started. It was Friday and there was Saraswati Puja in the school. At the suggestion of teacher, Sangeeta returned home for bringing some flowers. Since she noticed that house was locked from outside she enquired from the neighbour about her mother. Ultimately, she returned home, opened the door to find mother G Shobha lying on the floor in injured condition with bleeding injuries on her head, face etc. A blood stained axe was also lying there. She enquired from her mother as to what had happened. She disclosed that she was assaulted by Sangeeta's father i.e., accused. Sangeeta reported the matter to her maternal uncle Tukaram (PW-2), who arrived at the spot and H enquired from Shobha when she repeated that she was assaulted by

accused. Tukaram (P.W.2) and his uncle Ganpat took Shobha to Hospital at Renapur in an auto rickshaw. At the advice of Medical Officer, Renapur, she was shifted to Civil Hospital, Latur. The Medical Officer at Civil Hospital, Latur, advised them to take her to S.R.T. Medical College, Ambajogal. The relatives, however, took her to Dr. Sham Agroya (P.W.6) a private medical practitioner and neuro surgeon at Latur. Tukaram went to Police Station, Renapur and reported the matter to Police. His report was reduced to writing and the same was treated as FIR (Exh.24), which set law into motion. A B

4. Although prosecution does not have any direct evidence about the incident on record, it relies upon dying declaration of deceased Shobha on more than one occasions. Apart from oral narration to daughter Sangeeta and cousin brother Tukaram, the dying declaration has also come on record in the form of history of incident as recorded by Medical Officer Dr. Warad (P.W.4), who was then attached to Primary Health Centre, Renapur, where injured Shobha was taken immediately after incident. As it was a medico legal case, Dr. Agroya, while admitting Shobha, gave intimation of the same to Police Station by a written letter, whereupon Police Inspector visited the hospital on 29.11.2003 and in presence of Dr. Agroya, he recorded statement of injured Shobha. Shobha was subjected to surgical treatment by Dr Agroya on 29.11.2003 and subsequently she was discharged from the hospital on 09.12.2003 as cured patient. However, Shobha expired on 10.12.2003. C D E

5. Consequently, the offence, which was initially registered under Section 307 of IPC was converted to one under Section 302 of IPC. On completion of the investigation, charge sheet was filed in the Court of competent Magistrate and upon committal, Sessions Judge recorded conviction and sentence as described hereinabove at the conclusion of Sessions trial. F G

6. The accused in his statement, recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code'), pleaded innocence. Before the trial court ten witnesses were examined to further prosecution version. H

A 7. Before the High Court the stand of the appellant essentially was that the dying declarations are not reliable. As a matter of fact there were four dying declarations recorded; two were oral and two were recorded. Apart from oral narration to Sangeeta (PW-5) daughter of the deceased, Tukaram (PW2) cousin brother's statement was recorded as dying
B declarations by PW.4 Dr. Vilas Warad, Medical Officer, Primary Health Centre, Renapur who initially examined the injured and recorded her statement. Dr. Agroya (PW-6) while admitting the deceased gave intimation to the Police station . It was also submitted that the offences were not covered under Section 302 IPC, 304 Part I and 304 Part II
C IPC. The trial court did not accept this stand and recorded conviction and sentence as noted above. The accused and the State reiterated the respective stand before the High Court. High Court found that the dying declarations were reliable and there was not much variation in the version. However, the dying declaration as contained in Exh. 36 was kept out of
D consideration, and the dying declarations before the doctor and the cousin brother were accepted. Coming to the plea that the case was not covered under Section 302 IPC, the High Court referred to the factual aspects, the injuries sustained and came to the conclusion that case was clearly covered under Section 302 IPC.

E 8. The stand taken by the appellant before the High Court was reiterated.

9. Learned counsel for the State supported the judgment of the courts below.

F 10. So far as the dying declarations are concerned as rightly observed by the High Court even if Exhibit 36 is kept out of consideration, the dying declarations both oral and written were sufficient to fasten the guilt of the accused. The High Court has elaborately dealt with the authenticity of the
G dying declarations and had rightly come to the conclusion that they did not suffer from any infirmity.

H 11. Coming to the question as to applicability of Section 302 IPC, great emphasis was laid on the evidence of Dr. S.K. Shinde (PW-7). It was contended that the death was due to medical negligence and therefore

accused could not have been convicted under Section 302 IPC. It was submitted that had the patient been given proper care, there was a possibility of removing thick mucus and food particles from trachea and bronchi by using certain instruments and with proper medicines, she could have survived. The High Court noted that the throwing out the vomit by the deceased was not a natural course but it was a result of two injuries i.e. injuries Nos. 3 & 4. The High Court found that the presence of mucus and food particles in the trachea and bronchi cannot be totally delinked from the injuries inflicted by the accused. It was the stand of the accused that the death was due to Septicaemia and therefore, it is not referable to cause of death in the ordinary course of nature due to ante mortem injuries.

12. In *State of Haryana v. Pala and Ors.*, AIR (1996) SC 2962 it was noted as follows.

“In answering the question whether a wound is dangerous to life, the danger must be assessed on the probable primary effects of the injury. Such possibilities as the occurrence of tetanus or septicaemia, later on, are not to be taken into consideration.”

13. In *Sudershan Kumar v. State of Delhi*, AIR (1974) SC 2328 it was noted as follows:

“The fact that the deceased lingered for about 12 days would not show that the death was not the direct result of the act of the accused in throwing acid on her. So also the fact that the deceased developed symptoms of malaena and respiratory failure and they also contributed to her death could not in any way affect the conclusion that the injuries caused by the acid burns were the direct cause of her death.”

14. As noted above it was emphasized by learned counsel for the appellant that with proper medical care the deceased could have survived and therefore Section 302 IPC has no application. The plea clearly overlooks Exception 2 to Section 299 IPC, which reads as follows:

“Explanation 2.--Where death is caused by bodily injury, the

A person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.”

B 15. When the background facts are examined on the touchstone of the principles of law highlighted, the inevitable result is that the appeal is without merit, deserves dismissal, which we direct.

K.K.T.

Appeal dismissed.