

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 970 of 2006

NATHA SHANKAR MAHAJAN

...APPELLANT

VERSUS

STATE OF MAHARASHTRA

...RESPONDENT

J U D G M E N T

SIRPURKAR, J.

1. This appeal is against the concurrent judgments of the Sessions Court as also the High Court whereby the accused stands convicted for the offence punishable under Section 302 IPC on the allegation that he committed the murder of his wife Sakhubai by pouring kerosene on her person and setting her ablaze.

2. As per the prosecution case, the relations between the accused and his wife were not cordial inasmuch as the husband suspected the chastity of his wife and believed that she had illicit relations with one Babulal Parsharam Mahajan. It is alleged that on the fateful day i.e. 19.3.1985, the accused thrashed the deceased whole night and ultimately, in the morning, he set her ablaze. Her screams were heard by her neighbour PW2 Bhagwan Mali who came and sent a information to her father Babu Lal Daga Mahajan that the deceased was burnt. It is the father who had taken the deceased to the hospital. After

reaching the hospital, she was treated by PW5 Dr. Dagadu Pawar who also arranged for recording her dying declaration. It is the prosecution case that her dying declaration was recorded by PW3 Bhalerao Bhimsing Salunke, an Executive Magistrate. PW5 Dr. Dagadu Pawar also made an endorsement on the dying declaration that the deceased was conscious and was in a position to give a statement. Both the courts below have relied on the dying declaration.

3. Mr. Ranjan Mukherjee, learned counsel appearing for the accused argued that the sole basis of the conviction in this case is the aforesaid dying declaration and, therefore, if there is any suspicion about this dying declaration, the benefit must go to the accused. That is a correct proposition of law. However, it is also the settled position that where the dying declaration is believable, credit worthy and appeals to the court, the same can be made the sole basis of the conviction. That appears to be the case here.

4. We have gone through the dying declaration ourselves and also seen the evidence of PWs 3 and 5 whose evidence was not shaken in the cross-examination at all. PW5 Dr. Dagadu Pawar has very categorically said in his evidence that the deceased was in a position to understand herself and was in a position to give statement. Therefore, even if the doctor says that he was not

attentive as to what exactly was told to the PW3, would not matter particularly in view of statement of PW3 who recorded the dying declaration of the deceased that he recorded the same as per the version of the deceased. In the dying declaration, the deceased had clearly alleged that she was beaten by her husband on account of the suspicion that he had about her chastity and ultimately, he poured kerosene over her body and set her ablaze. She has also given the name of the person with whom she was allegedly in tow.

5. There is one more circumstance which has not been adverted to, i.e., the oral dying declaration made by the deceased to her father. As soon as, he reached the house of the deceased, he asked her as to how she was burnt. There is no cross-examination of this witness on this point who was examined as PW6.

6. Under the circumstances, we feel that both the courts below have committed no error in relying upon the dying declaration and convicting the accused. Therefore, this appeal fails and is dismissed.

.....J.
[V.S. SIRPURKAR]

.....J.

[T.S. THAKUR]

NEW DELHI
APRIL 28, 2011.

