

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.504/2012

IBRAHIM ISMAIL BHATTI

APPELLANT(S)

VERSUS

STATE OF GUJARAT

RESPONDENT(S)

O R D E R

1. Heard learned counsel appearing for the parties.
2. The appellant is the husband of the deceased who has been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860, (for short, 'the IPC'). According to the prosecution, on 31st October, 1992 the appellant and the co-accused (brother of the appellant) poured kerosene on the person of the deceased and set her to fire. The deceased was taken to hospital on the next day. On 3rd November, 1992, on the basis of the statement of the deceased (Ex.51), First Information Report was recorded. According to the prosecution case, dying declaration was recorded before the Executive Magistrate who was examined as PW1. The Trial Court convicted the appellant but acquitted the co-accused. Conviction of the appellant has been confirmed by the impugned judgment.

3. The learned counsel appearing for the appellant has taken us to the notes of evidence. His first submission is that the alleged dying declarations have been recorded three days after the incident and there is no explanation of such a delay. Moreover, the deceased died within two hours of the dying declaration recorded by PW1. Inviting our attention to evidence of PW1, it is submitted that the statement of the deceased was not recorded as per the dictation and there are additions made by PW1. He pointed out that two independent witnesses namely PW4 and PW5 who according to the prosecution case doused the fire did not fully support the prosecution and, therefore, they were declared as hostile witnesses. It is submitted that both the witnesses were independent witnesses who did not depose that the deceased stated that the appellant had poured kerosene on her. The submission of the learned counsel for the appellant is that the dying declarations relied upon by the prosecution cannot be believed at all.

4. We have carefully perused the depositions of PW1 and PW8. PW8 is the Medical Officer who certified on the dying declaration recorded by PW1 that the deceased was fit enough to make a statement. It is not possible to accept the contention that something was added to the dying declaration to the deceased by PW1. In fact, PW1 has stated that the addition made by him was as per the dictation of the deceased.

5. We have also perused the deposition of Kanjibhai Bijalbai Patel, who recorded the statement of the deceased at Ex.51. Hardly anything has come on record in the cross-examination which will create any doubt about the correctness of the dying declaration. There is an oral dying declaration made by the deceased before Salemamad Hussein Lohar (PW6). Even the version regarding the oral declaration has not been shaken in the cross-examination.

6. Learned counsel invited our attention to Station Diary Entry of 3rd November, 1992 made in the afternoon by PSO attached to Bhuj Taluka Police Station. He pointed out that it is mentioned therein that the deceased suffered burn injuries while she was making tea. Apart from the fact that the entry is not made by a police officer who recorded the statement of the deceased, the mother of the deceased Aminaben (PW7) deposed that the deceased told her that she was tutored to tell that she got burn injuries while she was preparing tea.

7. We find that there is no reason to disbelieve the three dying declarations (one oral and two written). Only because PW4 and PW5 were declared as hostile, we cannot ignore the evidence in the form of the three dying declarations. We, therefore, find no error in the view taken by the Sessions Court and the High Court.

8. At this stage, we may refer to the order dated 12th March, 2012 passed in this appeal while granting bail to the appellant. Paragraphs 5 and 6 of the said order read as under:

"5. The appellant has already completed about 13(thirteen) years and 4 (four) months of his sentence. We are also informed by Ms. Wahi, learned counsel appearing for the State of Gujarat, that steps are being taken to release the appellant on his completion of 14 years imprisonment.

6. Be that as it may, since the appellant has already undergone a major part of the sentence, let him be released on bail to the satisfaction of the trial court and let not the same come in the way of his release in terms of the decision of the State Government."

9. Though we are dismissing the appeal and directing the appellant to surrender, the benefit of pre-mature release will have to be given to the appellant after he completes 14 years of actual imprisonment as conceded by the State in paragraph 5 reproduced above.

10. We dismiss the appeal. We direct the appellant to surrender within a period of one month from today for undergoing the remaining sentence.

11. We direct the respondent-State to implement the assurance recorded on behalf of the State in paragraph 5 of the order dated 12th March, 2012.

12. The appeal is accordingly dismissed. Pending application(s), if any, shall stand disposed of.

.....J.
(ABHAY S. OKA)

.....J.
(PANKAJ MITHAL)

NEW DELHI
DECEMBER 06, 2023

ITEM NO.105

COURT NO.8

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NO(S). 504/2012

IBRAHIM ISMAIL BHATTI

Appellant(s)

VERSUS

STATE OF GUJARAT

Respondent(s)

Date : 06-12-2023 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Appellant(s) Mr. Pukhrambam Ramesh Kumar, AOR
Mr. Karun Sharma, Adv.
Ms. Rajkumari Divyasana, Adv.

For Respondent(s) Ms. Deepanwita Priyanka, Adv.
Ms. Swati Ghildiyal, AOR
Ms. Devyani Bhatt, Adv.
Ms. Srujana Suman Mund, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order which
is placed on the file.

Pending application(s), if any, shall stand disposed of.

(KAVITA PAHUJA)
COURT MASTER (SH)

(AVGV RAMU)
COURT MASTER (NSH)