

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 62 OF 2020

The State of Maharashtra
Through Police Station Officer,
Shahada

... Applicant
(Original Prosecution)

Versus

1. Hemant S/o Ramchandra Sonawane,
Age: 38 years; Occupation: Service
R/o Vishnu Nagar, Plot No. 16,
Shahada.
2. Vimalbai w/o Ramchandra Sonawane
Age: 66 years; Occupation: Household,
R/o Rajratna Society, Plot No. 184,
Dhule, District Dhule.
3. Manish s/o Ramchandra Sonawane
Age: 45 years; Occupation: Private Service
R/o Rajratna Society, Plot No.184,
Dhule, District Dhule.
4. Shubhangi w/o Manish Sonawane
Age: 30 years; Occupation: Household
R/o Rajratna Society, Plot No. 184,
District Dhule.
5. Dinesh s/o Ramchandra Sonawane,
Age: 33 years; Occupation: Private Service
R/o Rajratna Society, Plot No. 184,
Dhule, District Dhule.
6. Sangita d/o Ramchandra Sonawane
(Sau. Sangita Karan Bagul)
Age: 41 years; Occupation : Service,
R/o Rajratna Society, Plot No.184,
Dhule, District Dhule.

7. Ramchandra s/o Surjan Sonawane
Age: 70 years; Occupation: Retired
R/o Rajratna Society, Plot No. 184,
Dhule, District Dhule.

... Respondents
(Original Accused)

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Smt. V. S. Choudhari, APP for Applicant.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 07th JUNE, 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. By way of instant application, the State is seeking leave to file appeal for questioning the judgment and order passed by the learned Additional Sessions Judge, Shahada, District Nandurbar in Sessions Case No. 28 of 2011, by which respondents were acquitted from the charges punishable under sections 302, 498-A, 504 and 506 read with section 34 of Indian Penal Code (IPC).

FACTUAL MATRIX

2. Deceased Sheetal suffered burns at Vishnu Nagar, Shahada on 30.12.2010 and was shifted to Dhule Civil Hospital, where her statement (Exh.47) was recorded, on the strength of which FIR bearing No. 177 of 2010 came to be registered.

3. The sum and substance of the dying declaration is that,

deceased was married to accused Hemant and out of the said wedlock they have a son, namely, Jatin. According to her, husband (accused no.1), parents-in-law (accused nos.2 and 7), brother-in-law (accused no.3), his wife (accused no.4), another brother-in-law (accused no.5), sister-in-law (accused no.6) were all subjecting her to ill treatment in the backdrop of demand of Rs.50,000/- for purchasing motorcycle for accused - husband so as to enable him to travel to attend his duties. According to her, on 29.12.2010, all accused in-laws abused her for not meeting the demand. Husband also raised quarrel with her. Her husband then poured kerosene and set her on fire. Only when she raised shouts, he tried to extinguish the fire with water and took her to Municipal Hospital, Shahada and then shifted her to Civil Hospital, Dhule, where she gave above dying declarations.

4. Investigation was carried out and accused came to be arrested. After completing all procedural formalities and after investigation is over, accused came to be charge-sheeted.

5. At trial before the learned Additional Sessions Judge, prosecution examined in all 14 witnesses. Their testimonies and the dying declarations were appreciated by the learned trial Judge and by the judgment and order dated 09.01.2020, learned trial

Judge concluded that prosecution has failed to establish any of the charge and thereby acquitted the accused.

Such judgment and order of acquittal is now proposed to be challenged by the State and hence instant leave application.

6. Learned APP would submit that the judgment proposed to be challenged is illegal, perverse and contrary to the evidence on record. According to learned APP, deceased Sheetal was subjected to cruelty on account of amount for purchase of motorcycle for her husband. She had promptly informed about it to her family members. That, as the demand was not met, all accused persons named in the FIR visited her house at Vishnu Nagar, Shahada, abused her and threatened her that they would seek divorce if she fails to meet the demand of Rs.50,000/-. It is pointed out that thereafter, husband also raised quarrel with her and it is he who poured kerosene and set deceased Sheetal on fire. According to learned APP, deceased gave dying declaration while undergoing treatment. The said dying declaration is voluntary, truthful and inspiring confidence. Roles of accused is clearly defined in the dying declaration. However, it is submitted that such evidence has not been properly appreciated by the learned trial Judge. Learned APP took us through the dying declaration and would submit that there is no infirmity in the same so as to

discard the dying declaration or to doubt its veracity. She would submit that law on the point of dying declaration has not been properly applied and testimonies of witnesses are also not appreciated in its correct perspective. Without assigning proper reasons, evidence of prosecution has been discarded and therefore, she prays that, they have strong case in appeal and so she seeks indulgence of this court by allowing application to enable prosecution to take up the matter in appeal.

7. We have heard learned APP.

We have also examined papers placed before us. It transpires that apart from relying on dying declaration, prosecution is also taking aid of oral testimonies of in all 14 witnesses. PW-1 Suresh seems to be the father of Sheetal, who was also known as Pratima. PW-2 Girdhar is a witness to the dying declaration. PW-3 Manisha is the neighbour. PW-4 Ranjana is a landlord. PW-5 Nilkanth Mule is the Naib-Tahsildar, who had recorded dying declaration (Exh.55/59) by visiting Civil Hospital, Dhule. PW-6 Dr. Shilpa Pawar is the Medical Officer, who examined Sheetal during visit of PW-5 Nilkanth for recording dying declaration. PW-7 Urmila is the sister of deceased. PW-8 Mangala, mother of deceased. PW-9 Yogesh, brother of deceased. PW-10 Bhagwan is a witness in whose vehicle Sheetal was shifted from

Shahada to Dhule. PW-11 Nilesh is the panch to seizure of papers (Exh.92) on 03.01.2011. PW-12 Shantilal, panch to the spot and seizure of articles on 31.12.2020, PW-13 Atul, police head constable, who has carried muddemal. PW-14 Eknath Patil, is the Investigating Officer.

8. Thus here record shows that, there are two dying declarations, i.e. first dying declaration (Exh.59) recorded on 30.12.2010 at Civil Hospital, Dhule and second dying declaration (Exh.60) also recorded on 30.12.2010. Therefore, we have carefully put both the dying declarations to close scrutiny.

9. **First** dying declaration has been recorded by PW-5 Nilkanth, the then Naib Tahsildar. This witness spoke about receiving communication from police, visiting Civil Hospital, Dhule, approaching doctor, requesting to examine the patient and issued fitness certificate. After completing such formalities, he claims that he recorded dying declaration, wherein deceased Sheetal allegedly stated that on 29.12.2010, she requested her husband Hemant to eat the stale food of previous day, but he did not respond and therefore she got annoyed, went in bathroom bolted the door from inside, poured kerosene on herself and set herself on fire. Thereafter, she herself opened the door and that time

husband doused the fire by throwing water and it is the husband who took her to Municipal Hospital and thereafter shifted her to Civil Hospital, Dhule.

PW-5 Nilkanth stated that he read over the contents of dying declaration and after she confirmed about correctness of the statement recorded, he took her thumb impression. Witness has identified the said dying declaration at Exh.55/59.

10. In the further testimony of PW-5 Nilkanth it has come that, father of the burnt lady lodged report at police station and therefore, he was again requested to go and record dying declaration. Thereafter, he again visited the Civil Hospital and after endorsement of doctor, he recorded the statement, wherein she stated that her husband came home on 29.12.2010 and after quarrel between herself and her husband, he poured kerosene on her person and set her on fire and locked the door of the house from the outside and fled away. Her such statement was recorded and he obtained her thumb impression. He identified the said second dying declaration at (Exh.60).

11. Above witness is subjected to extensive cross. It is pertinent to note that, in the first dying declaration it is clearly

stated by deceased that she immolated herself only because her husband did not respond to her request to eat the stale food. Further, it is seen that only on receipt of report from father, police authorities requested this witness to go and record second dying declaration and in the second attempt, deceased appears to have named husband for pouring kerosene. Thus, apparently only due to pressure of family members of lady, second dying declaration is recorded.

12. Apart from above dying declaration, prosecution has examined all relatives, i.e. parents, sisters and brothers, but the answers given by them in cross clearly go to show that the same are full of improvements and omissions. Whatever is stated by them in chief has not been stated by them in their statements to police. Therefore, in our considered opinion, such testimonies cannot be taken recourse to and relied upon. First dying declaration clearly attributes burns to suicide. Resultantly, in our considered opinion, with such quality of material on record, permitting State to proceed for filing appeal would be a futility. There is no merit in the case.

13. We have gone through the judgment and order passed by learned trial court. Learned trial Judge has correctly

appreciated both the dying declarations as well as oral evidence of prosecution. Law has been correctly applied as and when required. There is no perversity brought to our notice so as to upset the findings which are based on sound reasons. Hence, we are not inclined to grant leave and hence the application for leave to appeal by State stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)